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SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

JURISDICTIONAL STATEMENT

DOWNS AND PIRICH
Attorneys for Appellants
Tow Downs
John D. Pirich
603 Capitol Savings &
Loan Bldg.

BAUCKHAM, REED,
LANG, SCHAEFER,
& TRAVIS
Attorneys for Appellants
John Bauckham
500 Park Building
Kalamazoo, Mich. 49007

Of Counsel:
Eugene F. Black
Michigan Supreme Court
Justice (1956-1973), Retired
2700 Strawberry Lane
Port Huron, Mich. 48060
March, 1978

(Continued on inside cover)

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TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON,

Appellants,

v

MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,

and

CITY OF MIDLAND, a municipal corporation,

Appellees.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

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v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

(Continued on inside back cover)

INDEX

TABLE OF AUTHORITIES i

THE OPINIONS BELOW 1

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED 2

QUESTIONS PRESENTED BY THIS APPEAL 9

SUMMARY 13

STATEMENT OF THE CASE 14

A. FACTUAL BACKGROUND 14

B. OPERATION OF THE STATE BOUNDARY COMMISSION AND THE HOME RULE CITIES ACT 17

C. PROCEEDINGS BELOW 18

1. TOWNSHIP OF NOVI v. STATE BOUNDARY COMMISSION AND CITY OF NOVI 18

2. TOWNSHIP OF BRIGHTON v. STATE BOUNDARY COMMISSION AND CITY OF BRIGHTON 23

3. TOWNSHIP OF MIDLAND v. STATE BOUNDARY COMMISSION AND CITY OF MIDLAND 25

A SUBSTANTIAL QUESTION HAS BEEN RAISED 30

REASONS RELIED ON FOR ALLOWANCE OF THE APPEAL 31

I. THE SUPREME COURT OF MICHIGAN FAILED TO SUBJECT THE CHALLENGED STATUTE TO THE STRICT SCRUTINY TEST AS REQUIRED BY THE FOURTEENTH AMENDMENT, UTILIZED AN INAPPROPRIATE STANDARD OF REVIEW, AND NEGLECTED

TO DELINEATE THE COMPELLING STATE INTERESTS NECESSARY TO UPHOLD THE CONSTITUTIONALITY OF THE LAW AGAINST AN EQUAL PROTECTION CHALLENGE 31

A. Infringements On Fundamental Rights Guaranteed By The Fourteenth Amendment Must Be Subjected To A Standard Of Strict Scrutiny, Not A Test Of Reasonableness 31

B. The Standard Of Review Of Statutes Which Abridge A Fundamental Right Such As Voting Requires A Delineation Of Compelling State Interests 32

C. If A State Statute Permits Submission Of Annexation Resolutions To The Electorate For Approval, It Must Do So In A Manner Which Does Not Violate The Equal Protection Guarantee 32

D. The Michigan Supreme Court Was In Error When It Held That The 100-Or-Less Population Classification Was "Not Unreasonable." 39

E. Geography, Not Population, May Be Considered In Annexation Questions 41

II. A STATE STATUTE WHICH RESTRICTS A FUNDAMENTAL RIGHT SUCH AS VOTING MUST BE SUBJECT TO THE STRICT SCRUTINY OF THE COURT. ONLY A SHOWING OF COMPELLING STATE INTEREST WILL JUSTIFY UPHOLDING SUCH A STATUTE 44

A. The Court Has Traditionally Accorded State Statutes A Presumption Of Validity Only In The Area Of Economic Regulation 44

B. The Deferential Review — Rational Basis Standard Has Been Supplanted By The Requirements

Of Strict Scrutiny And Compelling State Interest When Infringement Of Fundamental Rights Are In Question 45

C. The Right To Vote Is A Fundamental Right. A Statute Which Restricts That Right Must Be Given Strict Scrutiny And Requires A Compelling State Interest To Withstand An Equal Protection Challenge 45

D. The United States Supreme Court Should Subject The Challenged Statute to Strict Scrutiny 49

III. THE RIGHT TO VOTE HAS BEEN DENOMINATED A FUNDAMENTAL RIGHT BY THE UNITED STATES SUPREME COURT 51

IV. ONCE THE RIGHT TO VOTE HAS BEEN GRANTED, IT MAY NOT BE RESTRICTED IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS PRINCIPLE APPLIES TO SPECIAL PURPOSE ELECTIONS AND TO REFERENDUM ELECTIONS 52

A. The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution Guarantees All Qualified Voters The Right To Participate Equally In Elections 52

B. Special Purpose Local Elections and Referendum Elections Are Equally Protected By The Fourteenth Amendment To The United States Constitution 53

C. The Michigan Home Rule Cities Act Discriminates Between Classes Of Voters In Violation Of The Equal Protection Guarantee Of The Fourteenth Amendment To The United States Constitution 61

V. THE ENSUING HARM TO TOWNSHIPS AND THEIR RESIDENTS FROM THE HOME RULE CITIES ACT'S ARBITRARY AND UNCONSTITUTIONAL DENIAL OF THE RIGHT TO VOTE IS SUBSTANTIAL AND WILL CONTINUE UNLESS THE OPINION OF THE MICHIGAN SUPREME COURT IS REVERSED 64

A. Townships Are An Important Form Of Local Government In Michigan 65

1. The Historical Role of Townships 65

2. The Township in Michigan Today 65

3. Michigan Townships Have An Important Future 66

B. Descriptive Statistics Of Michigan Townships 69

C. The Growth Of Township Population 77

D. The Legal Powers Of Michigan Townships 80

E. The Township Form Of Government In Michigan 88

F. Services Provided By Michigan Townships 89

G. Statistical Data On Annexation Of Township Land By Cities In Michigan 90

H. Immediate, Irreparable And Substantial Harm Will Result To Townships And Township Residents Unless The Opinion Of The Michigan Supreme Court Is Reversed 95

VI. CONCLUSION 100

APPENDIX — EXHIBITS

Exhibit A Circuit Court Opinion—*Township of Midland v. Michigan State Boundary Commission* 1a

Exhibit B Circuit Court Opinion—*Township of Novi v. State of Michigan* 13a

Exhibit C Circuit Court Opinion—*Township of Brighton v. Michigan State Boundary Commission* 20a

Exhibit D Michigan Court Of Appeals Opinion—*Township of Midland v. Michigan State Boundary Commission*, 64 Mich. App. 700 (1975) 29a

Exhibit E Michigan Court Of Appeals Opinion—*Township of Novi v. State of Michigan*, 67 Mich. App. 596 (1976) 51a

Exhibit F Michigan Supreme Court Opinion—*Township of Midland v. Michigan State Boundary Commission*, 401 Mich 641 (1977) 60a

Exhibit G Application for Rehearing and Stay Order 105a

Exhibit H Michigan Supreme Court Order Denying Application for Rehearing and Stay Order 166a

Exhibit I Complete Text of Section 9 of Home Rule Cities Act, MCLA 117.9; MSA 5.2088 ..... 168a

Exhibit J Affidavit Of Dr. Dennis Gilliland 173a

Exhibit K City Annexation Resolutions from January 1, 1972, to the Present, Population and Registered Voters Affected, Estimation of 100-or-less Classification 174a

Exhibit L Map of Novi 181a

Exhibit M Map of Brighton 182a

Exhibit N Map of Midland 183a

Exhibit O Government Finances of Michigan Townships 184a

Exhibit P Affidavit of Melanie Irish 187a

TABLES

1. Summary of Michigan State Boundary Commission Decisions, 1971 — February 15, 1978 43
2. Number of United States Townships Within Population Category 70
3. Number of Michigan Townships Within Population Category 71
4. State Equalized Valuations 75
5. Frequency and Percentage of State Equalized Valuations 76
6. Comparative Population of Michigan Townships and Cities 78
7. Frequency of Resolution Filings 91
8. Resolutions Filed by Cities Seeking Annexation of Adjacent Township Areas With 100-or-less Residents 93
9. Frequency Tabulation by Percentage of Township State Equalized Valuation for Township Area Sought to be Annexed by Cities 94

TABLE OF AUTHORITIES

UNITED STATES CASES

Adams v. City of Colorado Springs, 399 U.S. 901 (1970) 41
Baker v. Carr, 369 U.S. 186 (1962) 51
Cipriano v. City of Houma, 395 U.S. 701 (1969) ... 32, 54, 55, 59
Douglas v. California, 372 U.S. 353 (1963) 63
Dunn v. Blumstein, 405 U.S. 330 (1972) 48, 49, 51, 52
Eastlake v. Forest City, 426 U.S. 668 (1975) 49, 50
Evans v. Cornman, 398 U.S. 419 (1970) 52, 53
Gomillion v. Lightfoot, 364 U.S. 339 (1967), ... 14, 34, 35, 102
Graham v. Richardson, 403 U.S. 365 (1971) 45
Harper v. Virginia Board of Elections, 383 U.S. 663 (1966) 32, 46, 51, 52, 53
Humphrey's Executor v. United States, 295 U.S. 602 (1935) 34

Hunter v. City Pittsburgh, 207 U.S. 161 (1907) 13, 14, 33, 36, 37
Korematsu v. United States, 323 U.S. 214 (1944) 45
Kramer v. Union School District No. 15, 395 U.S. 621 (1969) 32, 46, 47, 48, 51, 53, 54, 55, 58
Marbury v. Madison, 1 Cranch 137 (1803) 34
New Orleans v. Dukes, 427 U.S. 297 (1976) 45
Reynolds v. Sims, 377 U.S. 533 (1964) 36, 45, 51
Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) 58
Town of Lockport, N.Y. v. Citizens for Community Action at the Local Level, Inc., 430 U.S. 259 (1977) 14, 56, 57, 58, 59, 60, 61, 102
United States v. Dieter, 429 U.S. 6 (1976) 9
Weber v. City Council of Thousand Oaks, 9 Cal 3d 950; 512 P2d 601 (1973) 40
Yick Wo v. Hopkins, 118 U.S. 356 (1886) 51

MICHIGAN CASES

Koschay v. Barnett Pontiac, Inc., 386 Mich 223; 191 N.W. 2d 334 (1971) 33, 34
Midland Township v. State Boundary Commission, 401 Mich 641; 259 N.W. 2d 326 (1977) 2, 22, 25, 30, 37, 38
Township of Midland v. Michigan State Boundary Commission, 64 Mich. App. 700; 236 N.W. 2d 551 (1975) 1, 29, 32
Township of Novi v. State Boundary Commission, 67 Mich App 596; 250 N.W. 2d 326 (1976) ... 2, 22, 24, 41, 64

STATUTES

UNITED STATES CODE

28 U.S.C. §1257 (2) 7
28 U.S.C. §2101 (c) 9

MICHIGAN COMPILED LAWS ANNOTATED

MCLA 41.2 *et seq.*; MSA 5.2 *et seq.* 85
MCLA 41.3 *et seq.*; MSA 5.3 *et seq.* 86

MCLA 41.61 *et seq.*; MSA 5.52 *et seq.* 87
MCLA 41.181; MSA 5.45(1) 84, 89
MCLA 41.241 *et seq.*; MSA 5.2371 *et seq.* 89
MCLA 41.251 *et seq.*; MSA 5.2481 *et seq.* 85, 89
MCLA 41.421 *et seq.*; MSA 5.2441 *et seq.* 86, 89
MCLA 41.481 *et seq.*; MSA 5.2391 *et seq.* 89
MCLA 41.721 *et seq.*; MSA 5.2770(1) *et seq.* 84, 89
MCLA 41.801 *et seq.*; MSA 5.2640(1) *et seq.* 84, 89
MCLA 41.851 *et seq.*; MSA 5.2640(31) *et seq.* 89
MCLA 46.171 *et seq.*; MSA 5.2767(10) *et seq.* 85
MCLA 117.1 *et seq.*; MSA 5.2088 *et seq.* ... 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 21, 22, 24, 25, 27, 28, 29, 30, 38, 39, 42, 50, 55, 61, 62, 63, 80, 96, 98, 100
MCLA 123.31 *et seq.*; MSA 5.2241 *et seq.* 19
MCLA 123.51 *et seq.*; MSA 5.2421 *et seq.* 86, 89
MCLA 123.731 *et seq.*; MSA 5.570(1) *et seq.* 85
MCLA 123.1001 *et seq.*; MSA 5.2242 *et seq.* 17, 18, 20, 22, 25, 30
MCLA 124.401 *et seq.*; MSA 5.3475(101) *et seq.* 89
MCLA 125.271 *et seq.*; MSA 5.2903(1) *et seq.* 85
MCLA 125.297 MSA 5.2963(27) 85
MCLA 125.321 *et seq.*; MSA 5.2963(101) *et seq.* 85
MCLA 125.1509 MSA 5.2949(9) *et seq.* 85
MCLA 128.151 *et seq.*; MSA 8.141 *et seq.* 89
MCLA 131.2 *et seq.*; MSA 5.3188(1) *et seq.* 86
MCLA 141.101 *et seq.*; MSA 5.3228(1) *et seq.* 85
MCLA 141.411 *et seq.*; MSA 5.2731 *et seq.* 85
MCLA 168.1 *et seq.*; MSA 6.1001 *et seq.* 87
MCLA 211.44 MSA 7.87 87
MCLA 211.201 *et seq.*; MSA 7.61 *et seq.* 86
MCLA 211.202; MSA 7.62 86
MCLA 256.562; MSA 9.1705 89
MCLA 280.1 *et seq.*; MSA 11.1001 *et seq.* 89
MCLA 281.621 *et seq.*; MSA 13.1821 *et seq.* 89
MCLA 281.951 *et seq.*; MSA 11.475(1) *et seq.* 89
MCLA 327.1; MSA 14.61 ..... 86, 89

MCLA 331.1 *et seq.*; MSA 5.2456(1) *et seq.* 89
MCLA 338.1301 *et seq.*; MSA 14.425(1) *et seq.* 89
MCLA 691.1201 *et seq.*; MSA 14.528(201) *et seq.* 89
MCLA 752.906; MSA 28.603(6) 89

COURT RULES

United States Supreme Court Rules 13(2), 15 2

UNITED STATES CONSTITUTIONAL PROVISIONS

U.S. Const. Am XIV 3, 7, 9, 10, 11, 12, 22, 24, 25, 29, 30, 31, 32, 37, 45, 46, 48, 49, 51, 56, 57, 60, 64, 65, 95, 101

MICHIGAN CONSTITUTIONAL PROVISIONS

Const. 1850, art. 11, §2 15
Const. 1908, art. 8, §16 15
Const. 1963, art. 1, §1 ..... 21, 22
Const. 1963, art. 1, §2 ..... 21, 22
Const. 1963, art. 7, §17 ..... 14, 15, 83
Const. 1963, art. 7, §18 83
Const. 1963, art. 7, §34 ..... 15, 81, 82, 83, 84
Const. 1963, art. 9, §6 86

OTHER AUTHORITIES

County and City Data Book; Bureau of the Census; U.S. Department of Commerce (1972) 8, 72, 73, 74
Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce (1972) 8, 71, 72, 78, 95, 100
Directory of Michigan Township Officials 1970-1979, The Michigan Townships Association, Lansing, Michigan (1977) 42, 71, 77
Dockets of Filings, Michigan State Boundary Commission (1971–February 15, 1978) 43

List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, 1978) 72, 78, 79
Lists of County, City, Village and Township State Equalized Valuations; State Tax Commission, Michigan Department of Treasury, Lansing, Michigan (1970-1976) 74
Michigan Manual 1977-1978; Department of Management and Budget, State of Michigan, Lansing, Michigan (1977) 8, 73
Organization of Counties in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (1977) 42, 70, 71, 77
Joseph A. Parisi, *A Manual for Township Government* (1973) 65, 66, 67, 68, 71, 74
Report of the Governor's Special Commission on Local Government (1972) 66, 67, 68
E. F. Schumacher, *Small is Beautiful* (1973) 69, 80
State of Michigan Constitutional Convention 1961 Official Record 82, 83
Robert W. Terry, Criteria Analyst, State Boundary Commission, Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission (July, 1977) 43, 92, 94, 99
Kenneth VerBurg, A Study of the Legal Powers of Michigan Local Governments (1969) 88
1970 Census of Population, Characteristics of the Population–Michigan, Vol. I, No. 24; Bureau of the Census, U.S. Department of Commerce (1971) 72
1972 Census of Governments, Vol. 1; Governmental Organization, U.S. Department of Commerce (1972) 69, 70, 77
1972 Census of Governments, Vol. 4; Finances of Muicipalities and Township Governments; No. 4; U.S. Department of Commerce (1972) 77
16 Am Jur 2d 985 40

IN THE
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No. .....

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
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MICHIGAN STATE BOUNDARY COMMISSION,
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CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

JURISDICTIONAL STATEMENT— THE OPINIONS BELOW

The Opinion of the Ingham County Circuit Court in *Township of Midland v. Michigan State Boundary Commission*, Docket No. 14598-C, appears as Exhibit A in the Appendix. The Opinion of the Ingham County Circuit Court in *Township of Novi v. State of Michigan*, Docket No. 14544-C, appears as Exhibit B in the Appendix. The Opinion of the Ingham County Circuit Court in *Township of Brighton v. Michigan State Boundary Commission*, Docket No. 15497-C, appears as Exhibit C in the Appendix.

The Opinion of the State of Michigan Court of Appeals in *Township of Midland v. Michigan State Boundary Commission*, 64 Mich. App. 700; 236 N.W.2d 551 (1975) appears as Exhibit D in the Appendix. The Opinion of the State of

Michigan Court of Appeals in the Brighton and Novi Township cases which were consolidated on appeal as *Township of Novi v. State Boundary Commission,* 67 Mich. App. 596; 242 N.W.2d 449 (1976), appears as Exhibit E in the Appendix.

The Decision of the Supreme Court of Michigan, decided on October 24, 1977, is reported as *Midland Township v. State Boundary Commission,* 401 Mich. 641, 259 N.W. 2d 326 (1977), and appears as Exhibit F in the Appendix.

Appellants' Application for Rehearing and Stay Order and Supporting Brief, dated November 14, 1977, appears as Exhibit G in the Appendix.

On December 16, 1977, the Supreme Court of Michigan denied to all appellants said Application for Rehearing and Stay Order without stating the grounds on which the denials were based. One such order, identical but for the varying names of plaintiffs and defendants as stated in the captions, appears as Exhibit H in the Appendix.

A notice of Appeal was filed with the Michigan Supreme Court on January 18, 1978 and is printed in a Supplemental Appendix to the Jurisdictional Statement.

JURISDICTIONAL STATEMENT—
STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellants, through their attorneys, file this statement of the grounds upon which it is contended that the Supreme Court of the United States has and should exercise jurisdiction to review the judgment entered by the Supreme Court of Michigan in this case.

Appellants, plaintiffs in the trial courts, are the Townships

of Midland, Novi, and Brighton and residents of each of the townships. Each township appellant and some township residents of each of the above townships filed suit against the Michigan State Boundary Commission. The adjacent cities were permitted to intervene as intervening defendants. Each appellant sought review of an Order of the State Boundary Commission approving a city's annexation of a portion of adjacent township land. In each case, annexation had been initiated by a resolution passed by the legislative body of a city pursuant to Home Rule Cities Act; 1909 Public Act 279; MCLA 117.1 *et seq;* MSA 5.1071 *et seq.,* as amended by 1970 Public Act 219.

Appellants challenge Section 9 of the Home Rule Cities Act (MCLA 117.9; MSA 5.2088), as being repugnant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Section 9 of the Act grants some citizens the right to vote on annexation measures and denies that right to vote to other equally interesed citizens. The grant or denial of the right to vote is based upon whether there are more or less than 100 residents in the area proposed for annexation. Appellants will demonstrate in the following sections of this Jurisdictional Statement that the 100-or-less classification is arbitrary and is a violation of the Equal Proection Clause of the Fourteenth Amendment to the Constitution of the United States. The right being denied township and city residents is the right to vote, a fundamental right guaranteed by our Constitution and subject to the rigid test of strict scrutiny. Only a compelling state interest can justify infringement of the right to vote.

The complete text of Section 9 is included as Exhibit I. Subsection (4) provides as follows:

> If an annexation is approved, and if on the date the petition or resolution was filed *100 persons or less* resided

in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

—MCLA 117.9(4); MSA 5.2088(4). Emphasis added.

Subsection (5) grants the right to vote which is denied in subsection (4), to the residents of townships and of annexing cities when more than 100 residents live in the portion of the township to be annexed. It provides as follows:

If an annexation is approved, and if on the date the petition or resolution was filed *more than 100* persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least twenty-five percent of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

—MCLA 117.9(5); MSA 5.2088(5). Emphasis added.

Section 9 also grants in subsection (8) the right to vote, denied in subsection (4), to residents of two cities involved in annexation where one city seeks to annex part of an adjacent city.

(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city or in any case where the territory proposed to be annexed is adjacent to the city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city, village, or township, such annexation may also be accomplished by the affirmative majority vote of the legislative body of such city and the approval of the legislative body of such adjoining city, village or township. An an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to the city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporations, the United States government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township. At least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the

township treasurer. *This section shall not be construed so as to give any city the authority to proceed hereunder to attach territory from any other city unless the question relative thereto has been voted upon by the voters of the entire cities affected, except as hereinbefore specifically provided where the territory proposed to be annexed is adjacent to a city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city.*

—MCLA 117.9(8); MSA 5.2088(8). Emphasis added.

The grant to city residents in subsection (8), of the right to vote is all encompassing, limited in only two circumstances. Subsections (4) and (5), make a distinction on citizens' right to vote on annexation matters involving annexation by a city of a township area *solely* on the basis of the number of residents in the township area sought to be annexed.

Subsection (5) grants a referendum vote on annexation measures to the residents of a township area proposed for annexation, to the residents of the remaining township and to the residents of the annexing city *if* more than 100 residents reside in the township area proposed for annexation. The votes of each of the three referenda are counted separately. A majority vote in each of the three referenda is required in order for the annexation to become effective. Subsection (4) denies a referendum vote, if 100 or less people reside in the area proposed for annexation, to all three groups—the residents of the area proposed for annexation, the residents of the remaining portion of the township, and the residents of the city.

Subsection (4) and (5) of Section 9 of the Home Rule Cities Act result in a "loophole." This "loophole" provision permits a city to gerrymander the boundary of an area of a township that is proposed for annexation so that 100 or less people reside

in the area and voters are thus denied a referendum vote. Thus, cities have two options to gobble up all or part of a township.

The first option is to use the less-than-100 residency qualification to gobble up valuable tax bases, such as shopping centers, factories, utilities, etc., one at a time. This procedure leaves the township with an area consisting of residents but a small tax base. These residents then may have their taxes simultaneously go up and governmental services reduced to a starvation basis because the economic tax base has been taken by the adjacent cities. The second alternative, for a city that could not gobble up a township of over 100 at one swoop, is to gobble it up in units of under 100 until nothing is left to the township. This is the procedure of cutting off the dog's tail an inch at a time.

There is no loophole provision for annexation matters involving annexation by one city of part of a second city. Residents of each city are given the right to vote under MCLA 117.9(8); MSA 5.2088(8), where one city seeks to annex part of an adjacent city.

Appellants challenged, in the highest court of the State of Michigan, Section 9 of the Home Rule Cities Act as being repugnant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The decision of the Supreme Court of the State of Michigan upheld the validity of the state statute. Thus, this action is within the appellate jurisdiction of the Supreme Court of the United States by virtue of Title 28 U.S.C., Section 1257(2):

> By appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The federal question before this court is substantial. The importance of the township form of government in a state with extensive rural areas cannot be underestimated. Thirty-eight percent (38%) of Michigan's population resides in townships and ninety-six percent (96%) of the land area of the State of Michigan is under the township form of government.[1] Section 9 of the Home Rule Cities Act has opened a veritable Pandora's Box. There are currently 73 resolutions for annexation of township land pending and many annexation measures will not be subject to a referendum vote because the resolutions involve township area with less than 100 residents. As a result, thousands of Michigan residents[2] are being denied

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[1]

The population figure was determined by the 1975 Intercensal population reported in *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Dept. of Commerce;* May, 1977. The land area was calculated by Dr. Dennis Gilliland (see affidavit, Exhibit J), from Michigan's total land area of 56,620 square miles as obtained from *Michigan Manual 1977-78;* Department of Management and Budget, State of Michigan, Lansing, Michigan; 1977, and the estimated land area of Michigan cities.

The estimated land area of Michigan cities, 2,136 square miles was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book;* Bureau of the Census, U.S. Department of Commerce; 1972. The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970.

[2]

A comprehensive list of city annexation resolutions filed with the Michigan State Boundary Commission is included as Exhibit K in the Appendix. This list shows the voter registration and population of each city and township involved in an annexation resolution from January 1, 1972 through February 15, 1978. The list also indicates, when available, whether the area proposed for annexation contains 100-or-less residents. Table 8 of Section V(G) on page 93 shows that an estimated 16 out of 22 filings in 1977 and all 23 filings in 1978 involved proposed annexation areas of 100-or-less residents.

the right to vote, a fundamental right guaranteed to them by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The judgment sought to be reviewed was issued on October 24, 1977, by the Supreme Court of Michigan, the highest court of the state. Appellants filed an Application for Rehearing and Stay Order on November 14, 1977, and the application was denied on December 16, 1977.

An appeal to the United States Supreme Court from a judgment in a civil action from the highest court of a state shall be applied for within ninety days after the entry of such judgment. 28 U.S.C. §2101(c) (1959). In the event that a petition for rehearing has been timely filed, this Court has ruled that the time for appeal begins to run at the time said petition is ruled upon:

> [T]he consistent practice in civil and criminal cases alike has been to treat timely petitions for rehearing as rendering the original judgment nonfinal for purposes of appeal for as long as the petition is pending.
>
> —*United States* v. *Dieter,* 429 U.S. 6, 8 (1976).

This jurisdictional statement has been filed within ninety days of the date on which the Application for Rehearing was denied and is therefore timely.

JURISDICTIONAL STATEMENT— QUESTIONS PRESENTED BY THIS APPEAL

1. Is Section 9 of the Michigan Home Rule Cities Act, which grants the right of a referendum vote on proposed annexations when the *township area proposed for annexation* by

a city contains *more than 100 residents,* and denies the right of a referendum vote when the township area proposed for annexation contains *100 or less residents,* in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Does Section 9 of the Michigan Home Rule Cities Act deny *residents of a township, who live outside a proposed annexation area* in the township, Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies the residents the right to a referendum vote on proposed annexation of an area of the township in which they reside because the township area proposed for annexation contains 100 or less residents, while it grants *those same township residents* the right to a referendum vote on proposed annexation of an area of the township if the township area sought to be annexed has more than 100 residents?

3. Does Section 9 of the Michigan Home Rules Cities Act deny *residents of one township* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies them the right to a referendum vote on proposed annexation of an area of that township because the township area sought to be annexed has 100 or less residents, while granting the right to a referendum vote on proposed annexation to *residents of another township* which has an area sought to be annexed because that township area has more than 100 residents?

4. Does Section 9 of the Michigan Home Rule Cities Act deny *residents of a city* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it is denies them the right to a referendum vote on proposed annexation by the city of an area of an adjacent township because the township area proposed for annexation

contains 100 or less residents, while it grants *those same city residents* the right to a referendum vote on proposed annexation by the city of an area of an adjacent township where more than 100 residents live in the township area sought to be annexed?

5. Does Section 9 of the Michigan Home Rules Cities Act deny *residents of one city* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies them the right to a referendum vote on proposed annexation by the city of an area of adjacent township because the township area proposed for annexation contains 100 or less residents, while it grants the right to a referendum vote on proposed annexations to *residents of another city* which seeks to annex an area of an adjacent township because the township area proposed for annexation has more than 100 residents?

6. Does Section 9 of the Michigan Home Rule Cities Act deny the *residents of a township area proposed for annexation* by an adjacent city Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies these residnts a referendum vote on the proposed annexation of the township area because the township area has 100 or less residents, while it grants a referendum vote to *residents of other township areas proposed for annexation* by an adjacent city because those township areas have more than 100 residents?

7. Did the Michigan Supreme Court use an *inappropriate standard of review* in sustaining, against an Equal Protection challenge, the Michigan Home Rule Cities Act which unequally and arbitrarily grants the right to vote on proposed annexations by cities of township areas, when *the Michigan Supreme Court failed to apply a test of strict scrutiny* to the Michigan statute and thus did not require the state to demonstrate a *compelling*

state interest where a *fundamental right, the right to vote,* is infringed?

8. Is the classification in Section 9 of the Michigan Home Rule Cities Act which grants the right to a referendum vote on annexation measures when the number of residents in the areas proposed for annexation *exceeds 100* and denies the right to a referendum vote when the number of residents in the area proposed for annexation is *100 or less,* an *arbitrary and invidious classification* and therefore a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

9. Does Section 9 of the Michigan Home Rule Cities Act violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when it *grants* the *residents of a city* a voice in proposed annexations of adjacent township areas through a resolution of the city's legislative body, but *denies* the *residents of the township* of which the adjacent city seeks to annex all or part, a similar voice by its legislative body in proposed annexations?

10. Does Section 9 of the Michigan Home Rule Cities Act violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when it grants residents of two cities a vote on annexation measures involving annexation by one city of part of a second city, but arbitrarily denies a vote to township residents and city residents on proposed annexation measures involving annexation by a city of a township area with 100-or-less residents?

11. Are the standards of "100-or-less residents" and "more-than-100 residents" of Section 9 of the Michigan Home Rule Cities Act irrational classifications which violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

SUMMARY

The fundamental constitutional issue raised in this case is whether on annexation questions the Michigan Legislature can deny to persons residing in township areas of 100-or-less the right to a referendum vote that is guaranteed those residing in areas of over 100 population.

The Michigan Supreme Court relied exclusively on the *Hunter* case (*Hunter v. City of Pittsburgh,* 207 U.S. 161; 28 S.Ct. 40 [1907]), to deny voters in annexation areas of 100-or-less residents the right to a referendum vote granted other voters.

In relying on the *Hunter* case, the Michigan Supreme Court made three egregious errors. First, it took pure dicta of the *Hunter* case, based on a different factual situation, and expanded that dicta *to hold that individuals residing in township areas of 100 or less did not have the right to vote on the question of annexation that other voters had.*

In *Hunter,* the facts were the state legislature of Pennsylvania *consolidated* the cities of Allegheny and Pittsburgh. The Pennsylvania Legislature represented the citizens of both Allegheny and Pittsburgh, and had the constitutional power to set municipal boundaries. The Michigan State Boundary Commission, with exclusive jurisdiction on boundary annexation questions, is *not* a legislative body based on one-man, one-vote, a factual difference from *Hunter.* In this case, the facts are that in township areas proposed for annexation by a city there is no referendum vote on annexation proposals if the township area sought to be annexed contains 100-or-less residents while there will be a referendum vote if more-than-100 residents live in the township area proposed for annexation.

The second error of the Michigan Supreme Court was *not* to refer to the *Gomillion* case (*Gomillion v. Lightfoot,* 167

F. Supp. 405; 364 U.S. 339 [1967]), in which the United States Supreme Court, sixty years after the *Hunter* case was decided in 1907, substantially limited the *Hunter* decision to make it clear that it was not the intent of the United States Supreme Court to deny equal protection of voting rights to those residing in townships, regardless of population.

The third error was *not* to refer to *Lockport* (*Town of Lockport, New York v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 [1977]).

Hunter, Gomillion and *Lockport* are discussed in detail, infra. A review of the Michigan Supreme Court decision in this matter being appealed from, as well as the index of authorities to the pleadings filed in this case, shows that neither the Michigan State Supreme Court nor any of the parties considered *Gomillion* or *Lockport*.

Since the Michigan Supreme Court issued the opinion appealed from in this case, a plethora of annexation petitions have been filed with the Michigan State Boundary Commission, almost all of those being for areas with less than 100 residents, thereby depriving those citizens of the right to vote.

JURISDICTIONAL STATEMENT— STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

The township has existed in Michigan as a form of local government since 1787. It provides services and representation to all Michigan residents who are not residents of a city. The Constitution of the State of Michigan of 1963 provides for townships as a Constitutional form of government:

> Section 17. Each organized township shall be a body corporate with powers and immunities provided by law.
>
> —Const. 1963, art. VII, §17.

> Section 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.
>
> —Const. 1963, art VII, §34.

Although Const. 1963, art. 7, §34, is a new section of the state constitution, Const. 1963, art. 7, §17 was previously codified in Const. 1850, art. 11, §2 and Const. 1908, art 8, §16. The only modification regarding township authority from the two previous Michigan constitutions is elimination of language requiring that suits and proceedings by or against a township be in the township name. This modification of Const. 1850 and Const. 1908 was not substantive since the language added nothing to the meaning or legal effect of the section.

The case before this Court originated as three separate cases which were consolidated on appeal. In each case, a city sought to annex a portion of an adjoining township.

Residents of the townships and the townships themselves opposed the annexation proposals. The State Boundary Commission, after conducting public hearings as required by statute and considering the proposals, approved each annexation.

In each case, the township residents and the townships themselves sought review in circuit court in Michigan of the Commission's order approving the annexation. Each complaint raised several state constitutional issues which are not federal questions and are therefore not before this Court. Each complaint also challenged Section 9 of the Home Rule Cities Act, 1909 PA 279; MCLA 117.1 *et seq;* MSA 5.2701 *et seq.;* as amended by 1970 PA 219, as a violation of the

Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Section 9 of the challenged provision grants the right of a referendum vote on the question of a proposed annexation if the township area proposed for annexation by a city contains more than 100 residents. In that case, a separate referendum vote is granted in the area proposed for annexation, the remaining portion of the township and the city. If the area proposed for annexation contains 100 or less residents, no referendum vote is held and the annexation order of the State Boundary Commission becomes final without a vote of the electorate. Township residents, those in the area proposed for annexation and those in the remaining township, would vote "NO" on the proposed annexation in a referendum vote. That is why cities councils try to avoid a referendum vote and draw the boundaries of areas proposed for annexation so that they contain 100 or less residents. The residents of the annexing city also have a right to vote "NO".

Section 9 of the challenged provision allows a city to draw the boundaries of an area proposed for annexation so that there are 100 or fewer residents, and the residents of the township, the city and the area proposed for annexation are all denied a referendum. This enables cities to take away the tax base of townships as in Midland and Novi Townships in the case at bar.

The real economic issue is who gets an increased tax base of valuable property with few or no residents, the people of a city or the people of a township? The Home Rule Cities Act permits a city council with the approval of the State Boundary Commission to annex adjacent, valuable tax property such as shopping centers, utilities and factories, *without a vote* of anyone in the township or city provided there are 100-or-less residents in the township area proposed for annexation. The

people of a township have no similar right to annex valuable tax properties in adjacent portions of cities.

B. OPERATION OF THE STATE BOUNDARY COMMISSION AND THE HOME RULE CITIES ACT

The Michigan State Boundary Commission was created by the Boundary Commission Act, 1968 PA 191, immediately effective November 15, 1968; MCLA 123.1001 *et seq.*; MSA 5.2242(1) *et seq.* The Commission consists of a chairman and two other state members serving staggered three-year terms, each of whom is appointed by the Governor with the advice and consent of the Senate (§2). In addition, with regard to the matters in a given county, there are two county members, each of whom is appointed to a three-year term by the presiding probate judge of that county, one of whom shall reside within a city and the other in a township (§5). As originally established, the Boundary Commission had jurisdiction over proceedings for the incorporation of home rule cities and home rule villages, and over the consolidation of cities and/or villages with additional territory into home rule cities. Annexation by cities of adjoining township land was still handled by the respective county boards of supervisors, or by the Secretary of State, if territory in more than one county was affected, pursuant to the version of the Home Rule Cities Act, in effect at that time.

In 1970, Section 9 of the Home Rule Cities Act was amended by 1970 PA 219, to be effective April 1, 1971. The 1970 amendment to Section 9 provides that annexations by cities of adjacent land belonging to townships are to be processed by the State Boundary Commission in the same manner as petitions for incorporation, and are subject to the provisions of the State Boundary Commission Act. According to the Act, *the legislative body of a city may initiate annexation proceed-*

ings by filing an annexation resolution with the State Boundary Commission, or a township may initiate annexation proceedings by filing an annexation petition signed by one percent of the population or twenty percent of the registered voters of the area affected by the annexation. The Commission first examines a petition or resolution for legal sufficiency, and may retain it for consideration or reject it for lack of legal sufficiency (Section 8 of the Boundary Commission Act). The Commission conducts public hearings pursuant to Section 8 and examines the petition or resolution in relation to statutory criteria set forth in Section 9 of the Act. After consideration, the Commission may reject the proposed annexation or approve the proposed annexation with or without change of boundaries of the parcel proposed to be annexed. Section 9, as amended, further provides that the Commission's Order approving a city's annexation of township land shall be subject to a referendum vote provided that more than 100 persons reside in the area approved for annexation. *If 100 persons or less reside in the area approved for annexation, the Commission's order shall not be subject to a referendum vote.* The residents of the annexed portion of the township, the remaining portion of the township and the city are thus denied the right to vote. MCLA 117.9(4); MSA 5.2088(4). In such a case, the Commission sends a certified copy of its order to each city, township, county and village affected, and then annexation becomes effective on the date specified in the order, without a vote by the electorate.

C. PROCEEDINGS BELOW.

1. TOWNSHIP OF NOVI v. STATE BOUNDARY COMMISSION AND CITY OF NOVI

On April 23, 1971, the City Council of Novi filed an annexation resolution (docketed as 1971-AR-9) with the State Boundary Commission. The resolution sought the annexation of seven discontiguous parcels of land within the Township of Novi by the city of Novi. The combined population of the seven parcels of township land was less than 100 residents. The remaining parcel contained the balance of the township. More than 100 people resided in the eighth and final parcel.

The land proposed for annexation in the original resolution (71-AR-9) consisted of seven isolated parcels which had previously been disconnected from the Village of Novi by Circuit Court order pursuant to the so-called "Farmland Disconnection Act." MCLA 123.31; MSA 5.2221. The land was not urban in character; at least three of these parcels were still being farmed at the time of the State Boundary Commission's public hearing on the City of Novi's proposed annexation resolution.

The seven parcels contained less than a total of 100 residents, hence a finding by the Boundary Commission to permit annexation by the City would not be subject to a referendum vote by the township, the city, or the inhabitants of the township area to be annexed. The statute precluded all of those inhabitants from voting because an insufficient number of people, 100 or less, lived in the area proposed for annexation. The balance of the township, apart from the territory proposed for annexation, consisted of one small residential area known as Brookland Farms Subdivision. This area was *surrounded by the City of Novi, and contained more than 100 residents.* (See map of Novi included as Exhibit L in the Appendix). Had the small remaining area been included in the area proposed for annexation, all of the residents of both city and township would have been permitted to vote in separate referenda.

The minutes of a city council meeting concerning the proposed annexation show that the City of Novi considered the inclusion of the Brookland Farms area. It decided against inclusion for the reason that to do so would raise the number

of inhabitants to more than 100, thus subjecting the proposed annexation to a possible referendum vote and defeat by voters if the State Boundary Commission approved the city's annexation resolution.

Shortly after the filing of the resolution docketed as 71-AR-9, a subsequent resolution was filed, asking for the annexation of Brookland Farms. The township asked the Boundary Commission to consolidate the petitions in order to eliminate the alleged gerrymander, and to insure a referendum vote on the annexation proposal since more than 100 persons would live in the consolidated area, but the Boundary Commission refused to do so.

On June 9, 1971, the State Boundary Commission declared the original annexation petition (1971-AR-9), filed by the City of Novi, legally sufficient pursuant to the Boundary Commission Act and the Home Rule Cities Act as amended.

On July 7, 1971, the State Boundary Commission held a pre-hearing conference, for which no record has been filed. At the pre-hearing conference, the Commission received considerable evidence for use in its decision making process. Some of the evidence was later revealed at the public hearing; some was not.

On October 20, 1971, the State Boundary Commission held a public hearing pursuant to the Boundary Commission Act and the Home Rule Cities Act, as amended. Although the City of Novi had presented additional evidence to the Commission at the prehearing conference, the Township of Novi was limited by the Commission to a 25 minute presentation at the public hearing.

The State Boundary Commission received further evidence at a closed session held prior to the adjudicative meeting.

The State Boundary Commission held an adjudicative meeting to determine whether or not to approve the Novi annexation on January 26, 1972. By Order dated May 25, 1972, the State Boundary Commission approved the annexation resolution of the City of Novi docketed as Docket No. 1971-AR-9.

On June 26, 1972, the Township of Novi and residents of the township, as Plaintiffs, filed a petition for review of the city's annexation resolution and Boundary Commission Decision (1971-AR-9) involving the seven parcels with a total population of under 100, in the Ingham County Circuit Court, being Case No. 14544-C.

On June 26, 1972, the Circuit Court entered an Ex Parte Order Staying Proceedings, and on July 7, 1972, said Order was made permanent during the pendency of the petition for review, or until further order of the Court.

The Circuit Court for Ingham County, Michigan, granted the Motion for Summary Judgment made by the Plaintiff, Township of Novi, and held the Michigan State Boundary Commission's annexation order under its docket number 71-AR-9, to be null and void and of no force or effect. The Court permanently enjoined further proceedings pursuant thereto.

The Court's order found the 1970 amendment to the Home Rule Cities Act in violation of several Michigan constitutional provisions, including equal protecton provisions as follows:

> (2) *The classification of "100 persons or less" in 1970 PA 219 is not based upon such a difference in situation or circumstance as to constitutionally permit such division as the basis for denying the right or privilege of referenda to some and granting it to others* and accordingly violates Sections 1 and 2 of Article I of the 1963 Michigan Constitution.
>
> —Emphasis added.

Sections 1 and 2 of Article I of the Michigan Constitution of 1963 are equal protection provisions stated as follows:

> Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.
>
> Sec. 2. No person shall be denied the equal protection of the laws.

The *Novi* and *Brighton* cases were consolidated on appeal (*Township of Novi v. State Boundary Commission;* 67 Mich. App. 596; 242 N.W. 2d 449 (1976). In reviewing these cases, the Court of Appeals affirmed in part, and held the challenged annexation provision unconstitutional on state constitutional grounds.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Midland Township* cases were consolidated with the Novi and Brighton cases before the Supreme Court of the State of Michigan as *Midland Township v. State Boundary Commission;* 401 Mich. 641; 259 N.W. 2d 326 (1977). The Court reversed, upholding both the State Boundary Commission Act and the Home Rule Cities Act as constitutional.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

2. TOWNSHIP OF BRIGHTON v. STATE BOUNDARY COMMISSION AND CITY OF BRIGHTON

On March 17, 1972, the City of Brighton filed a resolution with the State Boundary Commission seeking the annexation of certain territory within the Township of Brighton, Livingston County, to the City of Brighton. This resolution was docketed as 72-AR-8.

The resolution involved land that the City of Brighton had designated as an area outside the city for future development known as the "Brighton Urban Browth Area," or "BUGA" (see map, Exhibit M). The "BUGA" area is contiguous to the city, and the city and the BUGA area are isolated from the balance of the township by Interstate Highway 96. In its annexation resolution, the city encompassed more than half of the BUGA area which included most of the land available for commercial development. Less than 100 residents lived in the area of the township proposed for annexation. The balance of the BUGA area was primarily residential and contained over 100 residents.

On June 14, 1972, the State Boundary Commission declared the city's annexation resolution for acquisition of township property legally sufficient.

On September 12, 1972, the State Boundary Commission conducted a public hearing concerning the Brighton annexation. At the hearing, the township objected to the city's annexation resolution on the grounds that the resolution was *gerrymandered* to keep the number of residents at 100-or-less, to avoid a referendum vote as per the statutory exemption.

The Boundary Commission rejected the township request that the resolution be adjusted to include the entire BUGA

area which would have required by statute that a referendum vote be held on the proposed annexation since more than 100 people lived in the entire BUGA area.

After the public hearing, the State Boundary Commission accepted evidence regarding the proposed annexation. The Commission held a second hearing, and declared afterwards that they would not receive further evidence. However, the Commission accepted further evidence.

The Boundary Commission held the adjudicative meeting to determine if the proposed annexation should be approved and conducted the vote in executive session.

On May 17, 1973, the plaintiffs, Township of Brighton and residents thereof, filed a complaint in Ingham County Circuit Court for review of the State Boundary Commission order which had approved the Brighton annexation.

The Circuit Court granted Summary Judgment to the plaintiffs and declared the challenged annexation provision of the 1970 amendment to the Home Rule Cities Act, in violation of the Michigan Constitution of 1963. The question of violations of the state constitution is not a federal question, and is not before the United States Supreme Court.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Novi* and *Brighton* cases were consolidated on appeal. (*Township of Novi* v. *State Boundary Commission;* 67 Mich. App. 596 [1976]). In reviewing these cases, the Court of Appeals affirmed in part, and held the challenged annexation provision unconstitutional on state constitutional grounds.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Midland Township* cases were consolidated with the Novi and Brighton cases before the Supreme Court of the State of Michigan (*Midland Township* v. *State Boundary Commission;* 401 Mich 641; 259 N.W. 2d 326 [1977]). The court reversed, upholding both the State Boundary Commission Act and the Home Rule Cities Act as constitutional.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

3. TOWNSHIP OF MIDLAND v STATE BOUNDARY COMMISSION AND CITY OF MIDLAND

On February 15, 1968, an elector petition to annex 319 acres of Midland Township was filed with the Midland Board of Commissioners, pursuant to the Home Rule Cities Act as it existed at that time. Procedures for initiating annexations have been changed by the creation of the State Boundary Commission in 1968, and the 1970 amendment to the Home Rule Act. (1970 Public Act 219). The petition was transferred on April 28, 1971 to the State Boundary Commission and docketed as 1971-AT-7.

On May 6, 1971, an annexation resolution which had been passed by the City Council for the City of Midland was filed with the State Boundary Commission and docketed as 1971-AR-11. The resolution requested the annexation of the remaining portions of Midland Township.

The two proceedings were treated separately by the Boundary Commission. The Commission held a pre-hearing conference on February 2, 1972, and public hearings on Docket Number 1971-AT-7 on February 2, 1972, and on Docket Number 1971-AR-11 on February 24, 1972.

In Midland, evidence which was extremely influential, probably even outcome-determinative, was submitted to the State Boundary Commission in written form by Dow Chemical Company and others outside of the view of the public and the township. These firms were not represented at the public hearing, and publicly submitted no evidence. The city declined to discuss publicly the pivotal issue, namely the real or imaginary threat of the loss of industry to the area if the annexation were turned down, choosing instead to submit evidence privately in writing. Dow Chemical Company, Dow Corning Corporation, the Midland Chamber of Commerce and Consumers Power Company submitted letters on the question of alleged loss of industry. These letters did not appear on the record until the adjudicative meeting, which was held in executive session. The township was never informed of the letters, and had no opportunity to offer rebuttal evidence. At least four of the seven commissioners, according to the record of the adjudicative meeting, found the material offered in the letters persuasive.

The Boundary Commission held its adjudicative meeting during which evidence was received and the final vote was taken, in executive session. The township attorney was present, but was excluded from the meeting.

The Midland annexation resolution was drawn with an irregularly shaped southern boundary (see Exhibit N), which excluded all residents from the area proposed for annexation. Had these residents been included in the annexation area, a referendum vote would have been required under prior law, giving the residents of the city, the township and the township area to be annexed an opportunity to exercise a veto power over the annexation proposal by defeating the referendum vote. The Boundary Commission denied a request by Midland Township to consolidate the annexation resolution (1971-AR-11) and the annexation petition (1971-AT-7) both of which were before the Commission for ruling from the city of Midland. Consolidation of the petition and the resolution would have eliminated the effect of the city's blatant gerrymander tactics, and necessitated a referendum vote on the annexation proposal.

When the Boundary Commission denied the township's request to consolidate the annexation resolution and petition, Midland township filed suit in Ingham County Circuit Court against the State Boundary Commission. The City of Midland was permitted to intervene as an intervening defendant. The City of Midland, Intervening Defendant, moved for an order in the Ingham County Circuit Court for a return of the annexation petition which had previously been transferred to the State Boundary Commission, back to the Midland County Board of Commissioners to conduct an election pursuant to the prior version of Section 9 of the Home Rule Cities Act or, in the alternative, for a remand of the annexation petition to the State Boundary Commission.

On November 9, 1973, the Ingham County Circuit Court entered a Corrected Summary Judgment, which ordered that the annexation petition be returned by the Boundary Commission to the Clerk of Midland County for "whatever action is deemed legally appropriate."

On November 20, 1973, the Midland County Board of Commissioners, by a 6 to 5 vote, ordered a special election under the provisions of Section 9 of the Home Rule Cities Act as it existed prior to the enactment of the 1970 amendment, which the Ingham County Circuit Court had held to be unconstitutional. Section 9 had originally provided for a referendum vote on annexation question in which the votes of the residents of the city and township were counted together. Cities received an obvious advantage under this provision since cities generally have a larger population and more registered voters than do townships. The 1970 amendment to Section 9 provided for a separate referendum election in the city, in the township area proposed for annexation and in the remaining portion of the township. A majority vote in favor of annexation now required in each of the areas subject to a referendum vote, in order for the proposed annexation to become effective.

In accordance with the resolution of the Midland County Board of Commissioners, a special election was held in the City of Midland and the Township of Midland on February 5, 1974; Township voters — 708 votes were cast against the annexation and 18 votes were cast in favor of the annexation; City voters — 1,868 votes were cast against the annexation and 4,882 votes were cast in favor of the annexation. The total combined vote was 2,576 against the annexation and 4,900 in favor of the annexation. The annexation by the city of part of the township was approved and became effective April 1, 1974. No votes were cast from the area proposed to be annexed as it was by design of the city council uninhabited.

Separate adjudicative meetings were held on the annexation resolution and petition on May 17, 1972, by the State Boundary Commission which issued separate decisions approving both annexations on June 27, 1972.

On July 13, 1972, Midland Township and some township

residents filed a Petition for Judicial Review of the decision of the State Boundary Commission approving the annexations with the Ingham County Circuit Court, in the matter entitled *Township of Midland, a Municipal Corporation in Midland County, Michigan, and Robert B. Chatterton, Plaintiffs vs. Michigan State Boundary Commission, Defendant.* A restraining order with an order to show cause was issued by Judge Reisig against the Boundary Commission.

On July 21, 1972, a temporary injunction was issued after a hearing.

The City of Midland was accepted as an intervening defendant and filed its Answer on August 8, 1972.

On September 28, 1973, plaintiffs were granted summary judgment since the annexation provisions of the 1970 amendment to the Home Rule Cities Act were found to be in violation of the Michigan Constitution. These state constitutional questions are not federal questions and are not before this court.

Plaintiffs townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

Defendant, State Boundary Commission, appealed the Midland case. The Court of Appeals affirmed the holding of the lower court *Midland Township v. State Boundary Commission*, 64 Mich App. 700 (1975). Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The Novi and Brighton township cases were consolidated with the Midland Township case on appeal to the Michigan Supreme Court. The Supreme Court reversed and found for the defendants, upholding the Home Rule Cities Act, as amended, and the State Boundary Commission Act, as constitutional. *Midland Township v. State Boundary Commission*, 401 Mich. 641; 259 N.W. 2d 326 (1977). Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

JURISDICTIONAL STATEMENT

A SUBSTANTIAL QUESTION HAS BEEN RAISED

This appeal raises the question of whether the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is violated by Section 9 of the Home Rule Cities Act (Michigan Compiled Laws Annotated 117.9; Michigan Statutes Annotated 5.2088). This "loophole" provision permits a city council to annex portions of a township in which 100 or less persons reside, without allowing those citizens who live in that portion of the township, the remaining portion of the township, and the city a referendum vote on the question of annexation. The same law provides for a referendum vote on proposed annexations in all three areas if more than 100 persons reside in the area of the township sought to be annexed. While it is conceded that the legislature has plenary power to establish the boundaries of local governmental units, it does not have the power to grant some voters in some units the right to vote, and deny some voters in other units the same right to vote.

The "loophole" provision encourages city councils to gobble

up valuable tax bases of townships one piece at a time by gerrymandering boundaries of the township area sought to be annexed so that a referendum vote on the proposed annexation is never held, and townships are left only with poverty stricken sections starving for governmental services because of a lack of tax base. A city's ability to expand its borders and tax base at the expense of adjacent townships is limited only by the city's appetite for more land and increased economic wealth, and by the size of the townships themselves.

However, in city versus city annexations, the Michigan law eliminates this "loophole" by granting a right to vote to all the voters of the cities affected, further emphasizing this discrimination.

REASONS RELIED ON FOR ALLOWANCE OF THE APPEAL

I.

THE SUPREME COURT OF MICHIGAN FAILED TO SUBJECT THE CHALLENGED STATUTE TO THE STRICT SCRUTINY TEST AS REQUIRED BY THE FOURTEENTH AMENDMENT, UTILIZED AN INAPPROPRIATE STANDARD OF REVIEW, AND NEGLECTED TO DELINEATE THE COMPELLING STATE INTERESTS NECESSARY TO UPHOLD THE CONSTITUTIONALITY OF THE LAW AGAINST AN EQUAL PROTECTION CHALLENGE.

A. Infringements on fundamental rights guaranteed by the Fourteenth Amendment must be subjected to a standard of strict scrutiny, not a test of reasonableness.

A state statute infringing on a fundamental right, such as the right to vote, and challenged on grounds that it violates

the Equal Protection guarantee of the Fourteenth Amendment, must be subject to strict scrutiny by the Court. A mere showing that the classification is reasonable is not adequate. The United States Supreme Court has rejected the standard of reasonableness in cases involving an abridgement of a fundamental right or involving a suspect classification (*Kramer* v. *Union School District No. 15*, 395 U.S. 621 [1969]).

The Supreme Court of Michigan (*Midland Township* v. *State Boundary Commission, et al.*, 401 Mich. 641, 259 N.W. 2d 326 [1977]), failed to strictly scrutinize the Home Rule Cities Act, but upheld it merely on the grounds that the classification was "not unreasonable." The Court stated that the classification bore a substantial relation to the object of the legislation (*Midland Township, supra*, at 666-667).

B. The Standard Of Review Of Statutes Which Abridge A Fundamental Right Such As Voting Requires A Delineation Of Compelling State Interests.

The standard used by the Michigan Supreme Court does not satisfy the compelling state interest requirement so often reiterated by the United States Supreme Court where the right to vote is involved. *Kramer, supra; Cipriano v. City of Houma*, 395 U.S. 701 [1969]; *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

C. If A State Statute Permits Submission Of Annexation Resolutions To The Electorate For Approval, It Must Do So In A Manner Which Does Not Violate The Equal Protection Guarantee.

In addition to utilizing an innappropriate standard of review, and failing to delineate compelling state interests necessary

to justify upholding discriminatory classification where a fundamental right has been denied, the Michigan Supreme Court relied exclusively on *Hunter* v. *City of Pittsburgh*, 207 U.S. 161 (1907), for the proposition that no citizen has a vested right or legally protected interest in the boundaries of a city, village or township.

> Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and *there is nothing in the Federal Constitution which protects them from these injurious consequences.*
>
> —*Hunter, supra*, 179. Emphasis added.

The Michigan Supreme Court relied on over-generalized dicta in *Hunter*, which its opinion repeatedly discloses in bar of consideration of the Constitutional principles relied upon by appellants.

Michigan cases have consistently adhered to the longstanding principle reiterated in *Koschay v. Barnett Pontiac, Inc.*, 386 Mich. 223; 191 N.W. 2d 334 (1971):

> In the preparation of an opinion, the facts of the case are in mind. It is prepared with reference to such facts, and when considered in connection therewith, will generally be found satisfactory. When, however, an attempt is made to pick out particular parts or sentences, and apply them indiscriminately in other cases, nothing but confusion and disaster will be likely to follow. In other words, the opinion and decision of a court must be read and examined as a whole in the light of the facts upon

which it was based. They are the foundation of the entire structure which cannot with safety be used without reference to them.

—386 Mich. 223, 230-231, 191 N.W.2d 334, 338 (1971).

What has thus been written in our state was proclaimed originally by Chief Justice Marshall when one of his opinions, indicative language and all, was cited to the Supreme Court as controlling of *Marbury v. Madison*, 1 Cranch 137 (1803). *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), chronicles the event:

A like situation was presented in the case of Cohens v. Virginia, 6 Wheat 264, 399, 5 L Ed 257, in respect of certain general expressions in the opinion in Marbury v Madison, 1 Cranch 137, 2 L Ed 60. Chief Justice Marshall, who delivered the opinion in the Marbury case, speaking again for the court in the Cohens case, said: "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

—295 U.S. 602, 626-627 (1935).

However, there is some question as to the unbridled authority of *Hunter*. In *Gomillion v. Lightfoot*, 167 F. Supp 405; *aff'd* CA 270 F.2d 594; *rev'd.* other grounds 364 U.S. 339 (1967), the Court said:

Thus, a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitutions considered in those cases.

The *Hunter* opinion itself intimates that a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations, 207 U.S. at pages 178-181, 28 S.Ct. at pages 46-47. Further, other cases of this Court have refused to allow a State to abolish a municipality or alter its boundaries, or merge it with another city. [Citations omitted]. . . . For example, in *Port of Mobile v. United States ex rel. Watson* the Court said:

"Where the resource for the payment of the bonds of municipal corporations is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power, and leaves no adequate means for the payment of the bonds, is forbidden by the Constitution of the United States, and is null and void." *Port of Mobile v. United States ex rel. Watson*, 116 U.S. at page 305; S. Ct. at page 405.

This line of authority *conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.*

—*Gomillion, supra,* at 344-45. Emphasis added.

The *Hunter* case held that people have no constitutional right to a particular form of local government. IT DID NOT HOLD THAT PEOPLE LOST THEIR CONSTITUTIONAL RIGHTS OF EQUAL PROTECTION AND DUE PROCESS BECAUSE OF THE UNIT OF GOVERNMENT IN WHICH THEY RESIDED.

For example, there is no constitutional right to be in a particular state legislative or congressional district. BUT THERE IS A CONSTITUTIONAL RIGHT FOR THE CITIZEN TO HAVE AN EQUAL VOTE REGARDLESS OF WHICH LEGISLATIVE OR CONGRESSIONAL DISTRICT IS CHOSEN AS A RESIDENCE. See *Reynolds v. Sims*, 337 U.S. 533 (1964).

The basic error the Michigan Supreme Court made was to extend the doctrine of the *Hunter* case to say that not only did a person have no constitutional right to a particular form of local government—BUT HE ALSO WAIVED CONSTITUTIONAL RIGHTS TO EQUAL VOTING RIGHTS BY CHOOSING A PARTICULAR FORM OF LOCAL GOVERNMENT AS A RESIDENCE. The Court failed to distinguish the facts in *Hunter* from those in the instant case. In *Hunter*, the facts were the state legislature of Pennsylvania *consolidated* the cities of Allegheny and Pittsburgh. The Pennsylvania Legislature represented the citizens of both Allegheny and Pittsburgh, and had the constitutional power to set municipal boundaries. The Michigan State Boundary Commission, with exclusive jurisdiction on boundary annexation questions, is *not* a legislative body based on one-man, one-vote, a factual difference from *Hunter*. In this case, the facts are that in township areas proposed for annexation by a city there is no referendum vote on annexation proposals if the township areas sought to be annexed contains 100-or-less residents while there will be a referendum vote if more-than-100 residents live in the township area proposed for annexation.

Hunter is silent on the powers of a non-legislative agency such as the Michigan State Boundary Commission. While *Hunter* stands for the proposition that a state *legislature* has plenary power to establish the boundaries of local governmental units, it is, in effect, limited by *Gomillion* which holds that a *legislature's* power is subject to, and circumscribed by, the United States Constitution. The *Hunter* case did not address the central issue before this Court in the instant case that the right to vote is fundamental and protected by the guarantees of the Equal Protection Clause of the Fourteenth Amendment. Even though the legislature need not submit annexation questions to the electorate, a legislative grant by statute to that state's citizens to vote on such questions must be uniform, and free of arbitrary classifications. The denial of the right to vote in annexation questions to residents in areas subject to annexation resolutions, i.e., where the population of the area sought to be annexed is 100-or-less, to residents of the remaining portion of the township and to the residents of the city seeking to annex a portion of the township is arbitrary and denies these citizens of the opportunity to exercise the fundamental right to vote.

The Michigan Supreme Court failed to characterize the issue before it as one involving the denial of the voting franchise. It did not address the Constitutional requirement of measuring the statute and its denial of the right to vote against the rigid strict scrutiny test, nor did it identify a compelling state interest.

The Michigan Court's justification for upholding the challenged statute places economic expedience and concerns above the importance of a citizen's fundamental right to vote.

> The challenged classification . . . tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power

to prevent an annexation economically advantageous to other persons or the community at large . . .

—*Midland Township v. State Boundary Commission;* 401 Mich. 641, 667; 259 N.W.2d 326 (1977).

The prevention of venal abuses—the possibility that a small number of voters will "prevent an annexation economically advantageous to other persons or the community at large"—does *not* rise to the level of demonstrating a compelling state interest sufficient to justify disenfranchising interested voters.

A comprehensive tabulation of the number of registered voters and the populations of the townships and cities which are affected by the annexation resolutions filed with the State Boundary Commission from January 1, 1972 through February 15, 1978 is included as Exhibit K in the Appendix. The total number of registered voters residing in townships affected by annexation resolutions filed by cities in the first two months of 1978 alone is 41,636 and the total number of registered city voters for the same period is 83,844. The total number of registered voters affected by annexation resolutions filed in 1977 is 34,833 for townships and 23,296 for cities.[1]

Of these voters residing in both townships and cities, all of whom have an interest in proposed annexations, some voters may be able to participate in a referendum vote on proposed annexations and some voters may be denied an equal right to participate in a referendum vote on proposed annexations as a result of the 100-or-less population classification of Section 9 of the Michigan Home Rule Cities Act. Many of these voters will be denied an equal right to vote on several proposed annexations because the adjacent city council has filed multiple annexation resolutions seeking annexation of several parcels of land within the same township.

[1] See Exhibit K for a comprehensive list of city annexation resolutions filed with the Michigan State Boundary Commission from January 1, 1972 to the present.

D. The Michigan Supreme Court Was In Error When It Held That The 100-or-less Population Classification Was "Not Unreasonable."

In the Brief of Cross-Appellants to the Michigan Supreme Court, Appellant Townships demonstrated that the *"100 or less"* classification of the Home Rule Cities Act is irrational:

> The Michigan statute is either inscrutable as to its objectives, or at best it is irrational. It extends the referendum where the population is more numerous, and denies it where the population is sparse. But annexation is obviously more appropriate and better received where numerous and dense population factors create an urban environment and require urban-type services, and less appropriate and less acceptable to voters where sparse population creates rural environment and insignificant service requirements. *The 100-person standard reaches the pinnacle of irrationality when it denies the franchise to a tiny, densely settled area, or to a large, sparsely settled area of 100 or less people, but grants the right of referendum to areas of 100 or more people regardless of size and population density.*
>
> —Brief of Cross-Appellants to the Michigan Supreme Court, in *Midland Townships, supra.*

Although population is relevant as a basis for some classification, it is not always appropriate and is inappropriate in the case at bar.

The rule is well settled that under usual circumstances and for most purposes, the legislature may . . . employ population as a basis for classification . . . without violating any of the federal or state constitutional guarantees of equality (*Radice* v *New York*, 264 US 292, 44 S. Ct. 325) . . . It is a mistaken idea that because classification on the basis of population is sustainable in respect of legislation on certain subjects, it may be appropriate for all purposes of classification in legislation enactments (*State* v. *Columbia G. & S. F. Turnp. Co.*, 133 Tenn 446, 181 SW 682). Such a basis . . . must have a reasonable relation to the purposes and objects of the legislation, and must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws (*Chandler* v. *Louisville*, 277 KY 79; 125 SW 2d 1026). If no such relation and differences exist, the classification is invalid. (*Strong* v. *Dingnan* 207 Ill 384, 69 NE 909).

—16 Am Jur 2d 985.

In this case, no rationale has been demonstrated for allowing some the opportunity to vote on annexation questions and denying the opportunity to others. An arbitrary numerical distinction has been made based on population. There is no magic in the number 100. In California, *12* resident voters may retain their right to vote in an annexation issue. *Weber* v. *City Council of Thousand Oaks*, 9 Cal. 3d 950; 513 P.2d 601 (1973). The California statute is cited with approval by the Michigan Supreme Court in *Midland Township, supra* at 667; yet no justification or Constitutional basis for disenfranchising *11* people in California and 100 in Michigan is advanced. It is as unconstitutional to disenfranchise one qualified voter as it is to disenfranchise 11,100, or more. A more rigorous delineation of the State's interest in discrimination on the basis of population is thus required.

E. Georgraphy, Not Population, May Be Considered In Annexation Questions.

In a Colorado case, the issue of voters' rights in annexation issues was raised. The United States Supreme Court sustained a statute which denied electors the right of a referendum vote where the area to be annexed was more than two-thirds contiguous with the annexing area. *Adams v. City of Colorado Springs*, 308 F. Supp. 1397 (1970); *aff'd.* 399 U.S. 901 (1970).

The Court held: "Greater or lesser contiguity with a municipality is about the *only reasonable test* for the legislature to provide for unilateral annexation." *Adams, supra* at 1404. Emphasis added.

As Appellant Townships pointed out to the Supreme Court of Michigan, it should be observed that a township area with two-thirds or more contiguity with the annexing city must in fact resemble a peninsula jutting into the annexing city. The Colorado statute cited in *Adams, supra*, denies the right to a referendum vote only where two-thirds or more contiguity exists. In such a situation, the appropriateness of the annexation arises from the close geographical interrelationships of the two areas. Greater or lesser contiguity with a municipality is about the only reasonable test for the legislature to provide for *unilateral* annexation. *Adams*, 308 F. Supp. at 1402 (1970).

Although the two-thirds or more contiguity statutory standard is reasonably related to the object of the legislation, a classification based on population alone is not. The effects of an unreasonable classification are shown in the case at bar. In *Township of Novi v. State Boundary Commission*, 67 Mich. App. 596, 242 N.W.2d 449 (1976), one of the cases consolidated on appeal to the Michigan Court of Appeals and included in

the instant appeal, the township area sought to be annexed consisted of seven separate, distinct, and discontiguous parcels containing less than 100 residents, but 72% of the township tax base. The sole remaining parcel of the township contained approximately 150 residents and an area of less than 75 acres. Such gerrymandering of township areas sought to be annexed is promoted and fostered by the challenged Michigan statute.

The discriminatory nature of the Home Rule Cities Act insures that an increasing number of Michigan voters will be disenfranchised as more and more cities, seeking to expand their tax base, look toward Michigan's 1,245[1] townships and initiate annexation of township residents and land.

Immediately following the Michigan Supreme Court decision herein appealed from forty-two (42) annexation resolutions were filed with the State Boundary Commission by city councils. An additional eleven (11) city annexation resolutions were filed with the State Boundary Commission on February 17, 1978, bringing the total number of city annexation resolutions filed with the Boundary Commission after the Michigan Supreme Court decision to fifty-three (53), compared with three (3) city annexation resolutions filed in 1977 prior to the decision of the Michigan Supreme Court.

A total of 178 city annexation resolutions have been filed from 1971 to February 15, 1978. The additional eleven (11) city annexation resolutions filed with the State Boundary Commission on February 17, 1978, bring the total to 189.

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[1]

Organization of Counties in Michigan, Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, 1977), and *Directory of Michigan Township Officials 1977-1979; The Michigan Townships Association; Lansing, Michigan* (1977).

The disposition of city annexation resolutions by the State Boundary Commission is shown in Table 1.

Table 1.

SUMMARY OF MICHIGAN STATE BOUNDARY COMMISSION DECISIONS[2] 1971-FEBRUARY 15, 1978

DECISION[3]	ANNEXATION RESOLUTIONS BY CITIES OF ADJACENT TOWNSHIP LAND
Approved	53
Denied	28
Rejected due to legal and formal errors	24
Pending	73
TOTAL	178[4]

[2]

This tabulation does not include eight annexation proposals which were transferred to the jurisdiction of the Michigan State Boundary Commission in 1971. Table 1 summarizes the annexation resolutions filed by cities with the State Boundary Commission as of June 30, 1977 as tabulated in Table 6 of *Annexation and Their Characteristics, A Review of Annexation Proposals Before the Michigan State Boundary Commission*, by Robert W. Terry. Criteria Analyst, Michigan State Boundary Commission, July 1977, and updated by the city annexation resolutions filed with the State Boundary Commission from July 1, 1977 to February 15, 1978 as listed in *Dockets of Filings*, Michigan State Boundary Commission; 1971-February 15, 1978.

[3]

There are four categories which indicate the status of each resolution in the decision making process of the State Boundary Commission. They are APPROVED (meaning approval of the proposed annexation with or without boundary adjustments), DENIED (meaning denial of the

Of the resolutions by cities for annexation of township land since 1971, 53 annexations have been approved by the State Boundary Commission and 73 resolutions are still pending. Since many of these resolutions for annexation are for township areas with 100-or-less residents, many more Michigan voters will be denied an equal right to a referendum vote upon approval by the State Boundary Commission.

II. A STATE STATUTE WHICH RESTRICTS A FUNDAMENTAL RIGHT SUCH AS VOTING MUST BE SUBJECT TO THE STRICT SCRUTINY OF THE COURT. ONLY A SHOWING OF COMPELLING STATE INTEREST WILL JUSTIFY UPHOLDING SUCH A STATUTE.

A. The Court Has Traditionally Accorded State Statutes A Presumption of Validity Only in the Area of Economic Regulation.

Traditionally, state statutes challenged on Equal Protection grounds were accorded the presumption of validity. As long as the scheme of classification was shown to have a rational basis, and the legislative means substantially furthered a legitimate legislative purpose, state statutes were given considerable deference and received minimal scrutiny.

In the area of economic regulation, the rational basis standard still prevails as state laws are subjected to a deferential

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proposed annexation), REJECTED (meaning the annexation resolution was screened out as being legally or technically insufficient) or PENDING (meaning that the annexation resolution has neither been approved, denied nor rejected as of this time).

[4]

An additional eleven (11) annexation resolutions by city councils were filed with the State Boundary Commission on February 17, 1978, bringing the total to 189.

standard of review. The classification challenged must be rationally related to a legitimate state interest; rational distinctions may be made with substanially less than mathematical exactitude. *New Orleans v. Dukes,* 427 U.S. 297 (1976).

B. The Deferential Review — Rational Basis Standard Has Been Supplanted By the Requirements of Strict Scrutiny And Compelling State Interest When Infringements of Fundamental Rights Are in Question.

More recently, the United States Supreme Court has insisted upon closer scrutiny of state statutes which curtail fundamental rights (*Graham v. Richardson,* 403 U.S. 365 [1971]), or involve "suspect classifications" (*Korematsu v. United States,* 323 U.S. 214 [1944]). The Court has declared that both categories of legislation are subject to a test of "strict scrutiny." The previous standard that state legislation must have a "rational basis" to satisfy Constitutional requirements is no longer sufficient to withstand an Equal Protection challenge.

A heavy burden falls on a state to demonstrate a compelling state interest which justifies any governmental intrusion into the area of fundamental rights guaranteed by the United States Constitution. The presence of a "legitimate legislative purpose" is insufficient to warrant a denial of the Equal Protection guarantee of the Fourteenth Amendment to the United States Constitution.

C. The Right To Vote Is A Fundamental Right. A Statute Which Restricts That Right Must Be Given Strict Scrutiny And Requires A Compelling State Interest To Withstand An Equal Protection Challenge.

The right to vote has been denominated a fundamental right. *Reynolds v. Sims, supra.* Statutes which deny *some* residents

the right to vote in a special purpose election are not entitled to a general presumption of Constitutionality. When the strict scrutiny test is applied, a statute which infringes upon a fundamental right such as voting will be upheld *only* if the state can demonstrate that it is necessary in order to satisfy a compelling state interest. *Kramer v. Union School District No. 15*, 395 U.S. 621 (1969).

In an earlier Equal Protection case involving the right to vote, the United States Supreme Court struck down a poll tax imposed by the State of Virginia as establishing a precondition for voting in violation of the Fourteenth Amendment to the United States Constitution. The Court said: "We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined."

> —*Harper v. Virginia State Board of Elections*, 383 U.S. 671 (1966).

In *Kramer, supra*, the Court overturned a state statute which restricted the right to vote in school board elections to owners or lessees of property or to parents of school age children. The Court held:

> In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. *Williams v. Rhodes*, 393 U.S. 32, 30 (1968). And, in this case, we must give the statute a close and exacting examination. "[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, *any alleged infringement of the right of*

> *citizens to vote must be carefully and meticulously scrutinized.*" *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). See: *Williams v. Rhodes, supra*, at 31; *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.
>
> Thus, state apportionment statutes, which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this Court. No less rigid an examination is applicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age. Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which *substantially affect their lives.* Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a *compelling state interest.*
>
> —*Kramer* at 626. Emphasis added.
>
> . . . [W]hen we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a "rational basis" for the distinctions made are not applicable. See *Harper v. Virginia Board of Elections*, 383 U.S. 663, 670 (1966). The presumption of constitutionality and the approval given "rational" classifications in other types of enactments are based on an assumption

that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality.

—*Id.*, at 627.

In a recent United States Supreme Court decision on voting rights, the Court reiterated the importance given to voting as a fundamental right when it overturned a one-year residence requirement for voter registration. *Dunn v. Blumstein*, 405 U.S. 330 (1972). The Court ruled that the requirement violated the Equal Protection clause of the Fourteenth Amendment because it denied some citizens the right to vote and consequently impinged on their right to travel.

In *Dunn*, the Court said:

Before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet *close constitutional scrutiny* . . .

—*Dunn, supra*, at 336.

It is certainly clear now that a *more exacting test* is required for any statute that "place[s] a condition on the exercise of the right to vote." *Bullock v. Carter, supra*, 405 U.S., at 143. This development in the law culminated in *Kramer v. Union Free School District No. 15, supra*. There we canvassed in detail the reasons for *strict review of statutes distributing the franchise*, 395 U.S., at 626-630, noting *inter alia* that such statutes "constitute the foundation of our representative society." We conclude that *if a challenged statute grants the right to vote to some citizens and denies the franchise to others, "the Court must determine whether the exclusions are necessary to*

promote a compelling state interest." Id., at 627, (emphasis added); *Cipriano v. City of Houma, supra*, 395 U.S., at 704; *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 205, 209 (1970). *Cf. Harper v. Virginia State Board of Elections, supra*, 383 U.S., at 670. This is the test we apply here.

—*Id.* at 337. Emphasis added.

A heavy burden of justification is on the State and the statute will be closely scrutinized in light of its asserted purposes.

—*Id.*, at 343.

The case at bar also presents a situation in which the right to vote is consistently denied in violation of the Equal Protection clause of the Fourteenth Amendment. The statute should be subjected to the test of strict scrutiny by the Court as enunciated in *Dunn, supra.*

Appellant Townships will demonstrate in Section IV that the Michigan Supreme Court failed to characterize the facts of this case as one involving the fundamental right to vote. As a result, the Court neither subjected the challenged legislation to the test of strict scrutiny enunciated in *Dunn, supra,* nor demonstrated the compelling state interest required to uphold a statute which restricts a fundamental right.

D. The United States Supreme Court Should Subject The Challenged Statute To Strict Scrutiny.

The right to vote is fundamental. A restriction on the right to vote in a referendum election is equally a restriction on a fundamental right. The referendum procedure is a basic instrument of democratic government. *Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1975).

In *Eastlake, supra,* the Supreme Court said:

> The Court of Appeals for the Ninth Circuit put it this way:
>
> > "A referendum, however, is far more than an expression of ambiguously founded neighborhood preference. It is the city itself legislating through its voters—an exercise by the voters of their traditional right through direct legislation to override the views of their elected representatives as to what serves the public interest." *Southern Alameda Spanish Speaking Organization v. City of Union City, California,* 424 F.2d 291, 294 (1970).
>
> Our decision in *James v. Valtierra,* upholding California's mandatory referendum requirement, confirms this view. Mr. Justice Black, speaking for the Court in that case, said:
>
> > "This procedure ensures that *all the people* of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services . . ." 402 U.S., at 143, 28 L. Ed. 2d 678, 91 S. Ct. 1331 (Emphasis added).
>
> Mr. Justice Black went on to say that a referendum procedure, such as the one at issue here, is a classic demonstration of "devotion to democracy . . ." *Id.,* at 141, 28 L. Ed. 2d 678, 91 S. Ct. 1331.
>
> —*Eastlake, supra,* at 678-679.

The Home Rule Cities Act (MCLA 117.9, Sections 4 and 5), provides for a referendum on an annexation petition by a city when the number of residents in the area to be annexed is more than 100. The right to participate in a referendum vote is denied under this statute if there are 100-or-less residents

in the township area proposed for annexation. The franchise is denied to otherwise qualified and registered voters in the annexed area, the surrounding township, and the city on the basis of a population figure, in violation of the Equal Protection guarantee of the Fourteenth Amendment of the United States Constitution. Therefore, the Michigan statute should be subjected to strict scrutiny.

III. THE RIGHT TO VOTE HAS BEEN DENOMINATED A FUNDAMENTAL RIGHT BY THE UNITED STATES SUPREME COURT.

The right to vote is fundamental in a free democratic society. *Reynolds v. Sims,* 377 U.S. 533 (1964). *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). The United States Supreme Court has zealously safeguarded the right to vote over a long period of time, and in a variety of different situations, including apportionment (*Baker v. Carr,* 369 U.S. 186 [1962]), abolition of the poll tax as a prerequisite for voting (*Harper v. Virginia Board of Elections,* 383 U.S. 663 [1966]), durational residence requirements (*Dunn v. Blumstein,* 405 U.S. 330, 1000 [1972]), and local special elections (*Kramer v. Union Free School District No. 15,* 395 U.S. 621 [1969]).

IV. ONCE THE RIGHT TO VOTE HAS BEEN GRANTED, IT MAY NOT BE RESTRICTED IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS PRINCIPLE APPLIES TO SPECIAL PURPOSE ELECTIONS AND TO REFERENDUM ELECTIONS.

A. The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution Guarantees All Qualified Voters The Right To Participate Equally In Elections.

In *Dunn v. Blumstein*, 405 U.S. 330 (1972), the United States Supreme Court, held:

> In decision after decision, this Court has made clear that a citizen has a *constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.* See, *e.g., Evans v. Cornman,* 398 U.S. 419, 421-422, 426; 90 S. Ct. 1752, 1754-1755 (1956); *Kramer v. Union Free School District, No. 15,* 395 U.S. 621, 626-628, 89 S. Ct. 1886, 1889-1890 (1969); *Cipriano v. City of Houma,* 395 U.S. 701, 706, 89 S. Ct. 1897, 1900 (1969); *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 667, 86 S. Ct 1079, 1081 (1966); *Carrington v. Rash* 380 U.S. 89, 93-94, 85 S. Ct. 775, 778, 779, (1965); *Reynolds v. Sims, supra.*
>
> —*Dunn v. Blumstein, supra.* Emphasis added.

The Supreme Court said in *Evans v. Cornman*, 398 U.S. 419 (1970):

> This Court has, of course, . . . recognized that the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . . At the same time, however, there can be no doubt at this date that *'once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.'*
>
> —*Evans v. Cornman, supra,* at 422. Emphasis added.

The state's interest is limited to establishing voter qualifications. Once a citizen complies with those voting qualifications and is granted the franchise by the state, additional lines may not be drawn which unconstitutionally discriminate against groups or individuals. *Harper v. Virginia State Board of Elections,* 383 U.S. 671 (1966).

B. Special Purpose Local Elections And Referendum Elections Are Equally Protected By the Fourteenth Amendment To The United States Constitution.

The Supreme Court has consistently extended the equal protection guarantee to special purpose elections and to referendum elections. In *Kramer, supra,* the Court overturned a state statute which disenfranchised some otherwise-qualified registered voters in a school board election. The statute restricted the right to vote to property owners or lessees, and to parents of school-age children. After subjecting the challenged statute to strict scrutiny, the Court held that the statute did not meet the exacting standard required by the Constitution for a selective restriction of the right to vote. The state must do more than merely demonstrate a rational basis for a classification which excludes voters.

> Whether classifications allegedly limiting the franchise to those resident citizens "primarily interested" deny those excluded equal protection of the laws depends, *inter alia,*

on whether all those excluded are in fact *substantially less interested* or affected than those the statute includes.

—*Kramer v. Union School District*, 395 U.S. 621 (1969). Emphasis added.

In a companion case to *Kramer, supra*, *Cipriano v. City of Houma*, 395 U.S. 701 (1969), the Court ruled that disenfranchisement of some of the registered voters in a special election was a violation of the Equal Protection Clause of the United States Constitution. The challenged statute granted the right to vote in a municipal bond election to property taxpayers, while denying the same right to qualified voters who were not property taxpayers. The proposed bond issue was being floated to finance the extension and improvement of Houma's municipally-owned utility systems. In noting that the excluded voters have a substantial interest in the operation of the utility, the Court said:

The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the State's sole justification for the statute is that the classification provides a "rational basis' for limiting the franchise to those voters with a "special interest," the statute cleary does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise." *Kramer v. Union Free School District No. 15, supra*, at 632. We therefore reverse the judgment of the District Court.

—*Cipriano, supra* at 706.

In both *Cipriano* and *Kramer*, the need for the state to demonstrate a compelling state interest is emphasized:

As we noted in *Kramer, supra*, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, "the Court must determine whether the exclusions are necessary to promote a *compelling state interest.*" *Kramer v. Union Free School District No. 15, supra*, at 627. *Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because "the questions scheduled for the election need not have been submitted to the voters." Id.*, at 629, n. 11.

—*Cipriano, supra* at 704. Emphasis added.

The Court acknowledged the right of the state to limit the franchise to qualified voters who have a special interest in an election. This includes those voters living within a special assessment district. Unless voters who are excluded from participation in an election are *substantially* less interested in the result such exclusion will not meet the standards required by the Fourteenth Amendment.

Assuming *arguendo*, that a State might, in some circumstances constitutionally limit the franchise to qualified voters who are also "specially interested" in the election, whether the statute allegedly so limiting the franchise denies protection of the laws to those otherwise qualified voters who are excluded depends on "whether all those excluded are in fact substantially less interested or affected than those the statute includes."

—*Cipriano, supra* at 704. (citing *Kramer, supra* at 632).

Section 9 of the Home Rule Cities Act permits voters a referendum on annexation proposals, if the township area proposed for annexation contains more than 100 residents. Section 9 denies that right to other qualified voters who have an equal and substantial interest in proposed annexations.

The argument that special purpose elections or referendum elections are equally protected by the Fourteenth Amendment to the United States Constitution, especially when the rights of voters of separate governmental entities are involved, was recently reaffirmed by this Court in *Town of Lockport, New York v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 (1977).

In the State of New York, county government exercises general governmental powers in the form of a single-branch legislature. Cities, villages and towns within the county also exercise general governmental powers.

Any changes in the allocation of powers as articulated in a county charter can occur only if the provisions of the New York Constitution and implementing legislation are met. A county board of supervisors may submit a proposed charter to the voters for approval, *but* a majority of the voting city dwellers and a majority of the voting noncity dwellers is a mandatory requirement for adoption of the charter.

In 1972 a proposed charter for Niagara County, New York, was put to referendum. A majority of the city voters approved the charter and a majority of noncity voters rejected the charter.

The citizens organization then filed suit in the federal court seeking a declaration that the New York concurrent requirement was unconstitutional. A second charter was put to referendum in 1974 with the same results prevailing. The district court ruled that the concurrent majority requirement violated the Equal Protection clause of the Fourteenth Amendment and ordered implementation of the 1972 charter. Initially, the matter was vacated and remanded for reconsideration in light of provisions of the charter adopted in 1974. The district

court found no substantial difference between the two charters and, further, that the 1974 charter superseded the 1972 charter.

This Court reversed the decision of the district court and held that the concurrent majority requirement did not violate the Equal Protection clause of the Fourteenth Amendment.

This Court in *Lockport* initially explained why a concurrent majority scheme did not violate the "one man, one vote principle" by stating:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a "single-shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives—instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters. If it is found to have such a disproportionate impact, the question then is whether a State can recognize that impact either by limiting the franchise to those voters specially affected or by giving their votes a special weight. This question has been confronted by the Court in two types of cases: those dealing with elections involving "special-interest" governmental bodies of limited jurisdiction, and those dealing with bond referenda.
>
> —*Lockport, supra* at 266.

The decision also reviewed the rights of voters in special purpose units of government wherein it was concluded that apportionment for greater influence to constituent groups found to be most affected by the governmental unit's functions was permissible. *See: Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973). However, this Court was quick to reemphasize *Kramer, supra,* which held that the classification scheme must be reasonably precise.

This Court then went on to review two basic issues:

> [1] . . . whether there is a genuine difference in the relevant interests of the groups that the state electoral classification has created; and if so,
>
> [2] whether any resulting enhancement of minority voting strength nonetheless amounts to invidious discrimination in violation of the Equal Protection Clause.
>
> —*Lockport, supra,* at 268.

The first issue was answered in the affirmative when this Court said:

> The argument that the provisions of New York law in question here are unconstitutional rests primarily on the premise that all voters in a New York county have identical interests in the adoption or rejection of a new charter, and that any distinction, therefore, between voters drawn on the basis of residence and working to the detriment of an identifiable class is an invidious discrimination. If the major premise were demonstrably correct—if it were clear that all voters in Niagara County have substantially identical interests in the adoption of a new county charter, regardless of where they reside within the county—the District Court's judgment would have to

> be affirmed under our prior cases. *Cipriano v. City of Houma, supra. That major premise, however, simply cannot be accepted. To the contrary, it appears that the challenged provisions of New York law rest on the State's identification of the distinctive interests of the residents of the cities and towns within a county rather than their interests as residents of the county as a homogeneous unit.* This identification is based in the realities of the distribution of governmental powers in New York, and is consistent with our cases that recognize both the wide discretion the States have in forming and allocating governmental tasks to local subdivisions, and the discrete interests that such local governmental units may have qua units. *Reynolds v. Sims,* 377 US, at 580, 12 L Ed 2d 506, 84 S Ct 1362; *Abate v. Mundt,* 403 US 182, 29 L Ed 2d 399, 91 S Ct 1904; *Mahan v. Howell,* 410 US 315, 35 L Ed 2d 320, 93 S Ct 979.
>
> —*Lockport, supra,* at 268-269. Emphasis added.

This Court then concluded that the concurrent majority requirement for charter adoption did not violate the Equal Protection clause through this analysis:

> The ultimate question then is whether, given the differing interests of city and noncity voters in the adoption of a new county charter in New York, those differences are sufficient under the Equal Protection Clause to justify the classifications made by New York law. *City of Phoenix v. Kolodziejski, supra; Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra; Hill v. Stone, supra. If that question were posed in the context of annexation proceedings, the fact that the residents of the annexing city and the residents of the area to be annexed formed sufficiently different constituencies with sufficiently different interests could be readily perceived. The fact of*

impending union alone would not so merge them into one community of interest as constitutionally to require that their votes be aggregated in any referendum to approve annexation. Cf. *Hunter v. City of Pittsburgh*, 207 US 161, 52 L Ed 151, 28 S Ct 40. Similarly a proposal that several school districts join to form a consolidated unit could surely be subject to voter approval in each constituent school district.

Yet in terms of recognizing constituencies with separate and potentially opposing interests, the structural decision to annex or consolidate is similar in impact to the decision to restructure county government in New York. In each case, separate voter approval requirements are based on the perception that the real and long-term impact of a restructuring of local government is felt quite differently by the different county constituent units that in a sense compete to provide similar governmental services. Voters in these constituent units are directly and differentially affected by the restructuring of county government, which may make the provider of public services more remote and less subject to the voters' individual influence.

The provisions of New York law here in question no more than recognize the realities of these substantially differing electoral interests. Granting to these provisions the presumption of constitutionality to which every duly enacted state and federal law is entitled, we are unable to conclude that they violate the Equal Protection Clause of the Fourteenth Amendment.

—*Lockport, supra,* at 271-273. Emphasis added. Footnotes omitted.

We argue that this Court's analysis emphasized above regarding the nature of annexation proceedings and the concomitant rights reposed in the distinctive entities is dispositive

of the issue herein. As this Court concluded, annexation proceedings consist of ". . . sufficiently different constituencies with sufficiently different interests . . ." (at 271).

Yet the rights of these constituents are trampled upon by the invidious scheme of the Section 9 of the Home Rule Cities Act. As this Court said above, ". . . [the] impending union alone would not so merge [cities and townships] into one community of interest . . ." (at 271).

Unless this Court declares Section 9 of the Home Rule Cities Act to be unconstitutional, the scheme which denies a referendum to residents whenever a township subject to annexation has 100 or less residents, will eliminate Equal Protection of the law which the Constitution affords to all citizens, regardless of the population of the area within which electors reside.

C. The Michigan Home Rule Cities Act Discriminates Between Classes of Voters in Violation of the Equal Protection Guarantee of the Fourteenth Amendment to the United States Constitution.

Historically, the right to a referendum vote on proposed annexations was granted to all interested and qualified voters in both the township and the city, regardless of the number of voters in the area to be annexed. The 1970 amendment to the Home Rule Cities Act limited that right to proposed annexation of areas that contained 100-or-less residents.

The Home Rule Cities Act (MCLA 117.9; MSA 5.2088) allows the legislative body of the *city* to determine whether a referendum vote shall be held, by permitting the city council to gerrymander the boundaries of the township areas proposed for annexation so that they include 100-or-less residents.

It is important to note that, in many cases, the people of a city do not want annexation and if given the opportunity, would vote the measure down. In other situations, the people of a township may support an annexation measure. This occurs when an adjacent city can provide services more economically, or where the city's need for expansion does not severely harm the township. Other annexation situations which arise are attempts by a city to annex township land which has a valuable tax base or is needed by the city for expansion, but will result in a substantial economic loss to the township. The latter situations are encouraged by the "loophole" provision of the Michigan Home Rule Cities Act because Section 9 of the statute gives the legislative body of a city the power to determine whether or not an annexation measure will be submitted to interested voters of three areas, the township, the township area proposed for annexation, and the city itself, in a referendum vote.

The effect of the "loophole" provision is to allow a city council to take the land it wants from a township. A township does not have a comparable right to annex land that it wants from an adjacent city.

The residents of the city are at least represented to the extent that annexation resolutions are proposed by duly elected city officials. Township residents do not have a comparable right of representation by the members of their township board in annexation resolutions proposed by city councils.

The residents of the township area sought to be annexed, and the residents of the remaining portion of the township have a substantial interest in the outcome of the referendum vote. The statute enunciates the interest of both groups of residents.

> The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.
>
> —MCLA 117.9(1); MSA 5.2088(1)
> Emphasis added.

The common interest of all residents in the area is in the geographical, sociological and political integrity of the area, the potential loss or gain of revenue to the remaining township, the possibility of higher or lower taxes, and the potential for increased or diminished participation and control in governmental functions. This issue is discussed more fully in Section V.

The "loophole" provision does not take into consideration the interests of township residents or of township governments when it limits the voting franchise on an annexation issue. Instead, the statute grants the franchise to some voters and denies it to others, depending on whether the city has included greater or fewer than 100 residents in the township area proposed for annexation. The loophole allows city councils to gerrymander the boundaries of proposed annexation areas so that there are 100-or-less residents and to thus deny interested voters a referendum.

The guarantee of Equal Protection is not a guarantee against all classification. The power to legislate is the power to classify persons and objects for a legitimate purpose. It is legislation that invidiously discriminates against some voters and favors other similarly situated voters which is prohibited by the Equal Protection guarantee. *Douglas v. California*, 372 U.S. 353 (1963). Classifications must be reasonable, must not be arbitrary and capricious, and must have a rational basis in the

law. Once the reasonableness of a classification has been established, a law must affect all persons within a particular class under similar conditions equally, and it must include all persons who belong to the class.

In this case, the classification which distinguishes voters from non-voters is based on population in the township area sought to be annexed. Appellant Townships will demonstrate in the following section that this classification is not reasonable, and denies the Equal Protection guarantee of the Fourteenth Amendment to the Constitution of the United States by disenfranchising interested and otherwise qualified voters.

In the Opinion of the Ingham County Circuit Court in the *Township of Novi* case, no reasonable basis for distinguishing between the classes was found.

> If one resides in an area to be annexed containing upwards of 100 persons, he has the right to a referendum; if he resides in an area wherein less persons reside he is barred from such right or privilege. (MCLA 117.9(4) and MCLA 117.9(5)). No reasonable basis or reason for such division appears in the statute, and none comes to mind.
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> —*Township of Novi v. State of Michigan*, Docket No. 14544-C, Ingham County Circuit Court. See Exhibit B in the Appendix.

V. THE ENSUING HARM TO TOWNSHIPS AND THEIR RESIDENTS FROM THE HOME RULE CITIES ACT'S ARBITRARY AND UNCONSTITUTIONAL DENIAL OF THE RIGHT TO VOTE IS SUBSTANTIAL AND WILL CONTINUE UNLESS THE OPINION OF THE MICHIGAN SUPREME COURT IS REVERSED.

A. TOWNSHIPS ARE AN IMPORTANT FORM OF LOCAL GOVERNMENT IN MICHIGAN.

1. The Historical Role of Townships

> These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest convention ever devised by the word of man for the perfect exercise of self-government and for its preservation.
>
> —Thomas Jefferson, as quoted in Joseph A. Parisi, *A Manual for Township Government*, at viii (1973).

Most historians believe that the Anglo-Saxons brought the township form of government to England. The first written reference to township government dates back to 890. The township was the first form of government in America, established by the Mayflower Compact when the Pilgrims established a colony at Plymouth. Townships were also the first form of government in Michigan, established by the Northwest Ordinance in 1787. Many townships are still six miles square as they were first drawn by the Northwest Ordinance. The shape and size of others have since been altered due to annexation and incorporation.[1]

2. The Township in Michigan Today

There are two forms of townships in Michigan today, the general law township created by the Northwest Ordinance of 1787, and charter townships created by the Charter Township Act of 1947. The Charter Township Act originally granted broader powers to charter townships, but general law town-

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[1] Joseph A. Parisi, *A Manual for Township Government*, at xv-xvi (1973).

ships have been granted increasingly broad powers since 1947. Both forms of township government now have virtually identical powers with those of cities.

Townships are particularly important in a state like Michigan, which has large rural areas. Townships provide effective and economical services to the residents of both rural and suburban areas. The flexibility of the township form of government is demonstrated by the wide range of township sizes. According to the 1970 census, there were 489 townships in Michigan with a population under 1,000, and 52 townships with a population over 10,000.[2] Michigan township budgets ranged from $200 per year to over $3.5 million for the largest township. The majority of township budgets range from $75,000 to $500,000 and the total township expenditure in Michigan exceeds $200 million annually.[3]

This sum represented the cost in 1970, of providing over one-third of Michigan's population with local government, including services and voter representation. The historic township concept has grown and remains a practical, effective and economical way of serving a large segment of rural and suburban Michigan.

3. Michigan Townships have an important future.

The 1972 *Report of the Governor's Special Commission on Local Government* stressed the importance of townships and recommended that townships play an even more important role in local government in the future.

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[2]
Id at x.

[3]
Id at xvii.

The proposed approach calls for a system of local municipalities charged to provide strong and responsive local government to each area of the state, whether the area be rural, suburban, urban, or post-urban in its stage of development. Wherever there are people, they need and deserve a reliable, and responsive local unit of government.

A network of jurisdictionally exclusive, but mutually supportive, units of local government with an identity, local pride, and capacity to act that characterizes the best in present day local governance is desired. A system of local units should evolve in which undue competition for economic base, geographical territory, and political control would be minimized.

Implementation of the proposal calls for some modifications in municipal governments, especially *townships* because their *authority has increased steadily over the years.*

• • •

> Townships are an integral part of the local government system envisioned, but some changes should be made so that all townships can participate effectively. Critical to the proposal is an understanding that *the two types of municipalities (cities and townships) should have equal status in their relationship to each other and to the county.*
>
> —*Id.* at 19. Emphasis added.

The report proposed that the village form of local government be eliminated, and that *townships and cities should be the only two classes of municipal government and that townships be equal to cities in authority.*

The recommended guidelines are as follows:

(a) The Governor and the Legislature should adopt and implement, within the recommended local government framework, *a municipal level of government consisting of two classes of municipalities, charter cities and townships, equal in their relationship to each other and other levels of government.* Each class of municipality would have an executive and legisative branch of government.

This new framework of municipal government would *eliminate the intermediate form of government*, the village. Prior to the implementation of such a framework, the Governor and the Legislature are encouraged to take the necessary action to prohibit the incorporation of any additional villages under either the Home Rule Village Act or the General Law Village Act.

(b) All actions granting enabling authority to provide services and regulatory powers should be granted equally from the time the two class framework is instituted.

(c) Townships should be permitted to reorganize under the provisions of the Home Rule City Act without regard to the population and population density requirements, subject to voter approval of a proposed charter.

—*Id.* at 19. Emphasis added.

The Governor's Special Commission is not alone in recognizing the importance of local governmental representation and services such as townships can provide.

In the affairs of men, there always appears to be a need for at least two things simultaneously, which, on the face

of it, seem to be incompatible and to exclude one another. We always need both freedom and order. *We need the freedom of lots and lots of small, autonomous units*, and, at the same time, the orderliness of large-scale, possibly global, unity and coordination. *When it comes to action, we obviously need small units, because action is a highly personal affair, and one cannot be in touch with more than a very limited number of persons at any one time.* But when it comes to the world of ideas, to principles or to ethics, to the indivisibility of peace and also of ecology, we need to recognize the unity of mankind and base our actions upon this recognition. Or to put it differently, it is true that all men are brothers, but it is also true that in our active personal relationships we can, in fact, be brothers to only a few of them, and we are called upon to show more brotherliness to them than we could possibly show to the whole of mankind.

—E. F. Schumacher, *Small is Beautiful* at 65 (1973). Emphasis added.

B. DESCRIPTIVE STATISTICS OF MICHIGAN TOWNSHIPS

There are 16,991 "organized governments" in the United States which are termed "townships" by the 1972 Census of Governments.[4] The term "township" applies to a local unit of government which serves inhabitants of areas defined without regard to population concentration and is distinguished from cities which are created to serve specific population concentrations. Township governments are found in 21 states and, in 1970, served a population of 45,948,000. Townships have a wide range of different governmental powers.

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[4] *1972 Census of Governments, Vol. 1; Governmental Organization U.S. Department of Commerce* (1972).

The reports for the 1972 Census of Government cites Michigan as being one of six states in which townships possess broad governmental powers. Where they include densely populated areas, townships "*perform functions commonly associated with municipal governments.*"[5] (Emphasis added). There are currently 1,245 townships in Michigan,[6] serving a total population of 3,479,221.[7]

A comparative distribution of township governments in the United States and in Michigan, by population-size is summarized in Tables 2 and 3.

Table 2.

NUMBER OF UNITED STATES TOWNSHIPS WITHIN POPULATION CATEGORY.

POPULATION CATEGORY	NUMBER OF TOWNSHIPS
50,000 or more	94
25,000 to 49,999	185
10,000 to 24,999	621
5,000 to 9,999	816
2,500 to 4,999	1,454
1,000 to 2,499	3,575
Less than 1,000	10,246
Total U.S. Townships	16,991

—*1972 Census of Governments, Vol. 1, Supra,* at 3.

[5]
Id at 3.

[6]
Organization of Counties in Michigan, Registrations and Records Sections, Michigan Department of State, Lansing, Michigan (January, 1977).

[7]
The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of

Table 3.

NUMBER OF MICHIGAN TOWNSHIPS WITHIN POPULATION CATEGORY

POPULATION CATEGORY	NUMBER OF TOWNSHIPS
10,000 and over	52
Between 9,000 and 10,000	6
Between 8,000 and 9,000	10
Between 7,000 and 8,000	21
Between 6,000 and 7,000	4
Between 5,000 and 6,000	35
Between 4,000 and 5,000	32
Between 3,000 and 4,000	68
Between 2,000 and 3,000	172
Between 1,000 and 2,000	356
Under 1,000	489
Total Michigan Townships	1,245

—Joseph A. Parisi, *Manual for Township Government,* at 10, (1973). (According to 1970 Census).

The 1,245[8] townships in Michigan, serving 3,479,221[9] resi-

Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce,* (May, 1977).

[8]
Organization of Counties in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, 1977).
Directory of Michigan Township Officials 1977-1979; The Michigan Township Association, Lansing, Michigan (1977).

[9]
The current population of Michigan townships, 3,479,221 is computed as the remainder of the Intercensal 1 July 1975 population of Michigan, 9,116,699 and total city population 5,637,478.

dents result in an average township population of 2,795 residents.[10] Township governments in Michigan serve thirty-eight percent of Michigan's total population of 9,116,699.[11] Redford Township in metropolitan Wayne County is Michigan's most heavily populated township with a population of 71,901 in 1970[12]

By comparison, there are only 265 cities in Michigan.[13] The total population of Michigan cities as of 1975 is 5,637,478, with an average population of 21,274 per city.[14] City populations in Michigan range from a low of 452 in Omer to a high of 1,335,085 in Detroit.[15]

The estimated land area occupied by Michigan cities in

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[10]

The estimated land area of Michigan cities, 2,136 square miles, was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book; Bureau of the Census, U.S. Department of Commerce* (1972). The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970 (See affidavit of Dr. Dennis Gilliland, Exhibit J).

[11]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from the Intercensal July 1, 1975 population of Michigan.

[12]

1970 Census of Population, Characteristics of the Population—Michigan Vol I, No. 24; Bureau of the Census, U.S. Department of Commerce (1971).

[13]

List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, (1977).

[14]

Current Population Reports, Series P-25, No. 670; Bureau of the Census, U.S. Dept. of Commerce (May, 1977).

[15]

Id.

1970 was 2,136 square miles,[16] approximately 3.8 percent[17] of Michigan's total land area of 56,620[18] square miles. The remaining 96.2 percent of Michigan land, 54,484 square miles, is under township government.[19]

A small fraction of the land area under township government is under village government as well. Residents of villages are also considered residents of townships and receive services from *both forms* of local government. The difference between the relationship of city and village government to township government in Michigan can be dramatized by the following analogy:

Picture the entire state as divided up into townships with the cities removed by a cookie cutter and the villages superimposed on the townships as though they are postage stamps.

Most townships are approximately six miles square, but some are eight times that size. Royal Oak Township in metropolitan

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[16]

The estimated land area of Michigan cities, 2,136 square miles, was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book; Bureau of the Census, U.S. Department of Commerce* (1972). The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970 (see affidavit of Dr. Dennis Gilliland, Exhibit J).

[17]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from footnotes 16 and 18.

[18]

Michigan Manual 1977-1978; Department of Management and Budget, State of Michigan, Lansing, Michigan (1977).

[19]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from footnotes 16 and 18.

Oakland County is the state's smallest township geographically, encompassing only six-tenths of a square mile. Yet, with 6,000 residents, it is also Michigan's most densely populated township.[20] Among Michigan cities with a population of 2,500 or more residents, city land areas ranged from .5 square miles (Keego Harbor and Pleasant Ridge) to 138.0 square miles (Detroit).[21]

The land area under the jurisdiction of townships has become increasingly valuable as shown by the state equalized valuations (SEV) of land in Table 4.

Table 4 indicates that the State Equalized Valuation of the total land area under township government in Michigan has steadily increased. This marked increase in township State

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[20]

Joseph A. Parisi, *A Manual for Township Government*, at 3, (1973).

[21]

County and City Data Book; Bureau of the Census, U.S. Department of Commerce (1972).

[22]

This tabulation is derived from *Lists of County, City, Village and Township State Equalized Valuations; State Tax Commission, Michigan Department of Treasury; Lansing, Michigan* (1970-1976).

[23]

The City totals for 1974 and 1976 include State Equalized Valuations for seven cities incorporated between 1970 and 1974, and are not included in the 1970 city total.

[24]

Section 211.9(c) of Michigan Compiled Laws; MCLA 211.9; MSA 7.9 changes the method in 1976 by which the State Equalized Valuation is determined.

[25]

The Township totals include the State Equalized Valuations of the villages they contain since townships and villages both have jurisdiction of overlapping land areas. The village contribution was $911,325,182 in 1970, $1,258,173,757 in 1974, $1,403,173,193 in 1975 and $1,372,455,435 in 1976.

TABLE 4.

STATE EQUALIZED VALUATIONS
(IN DOLLARS AND PERCENT)[22]

Class of Government	1970	1974[23]	1975	1976[24]
Township[25]	13,660,391,466 (35.4)	20,472,509,272 (39.5)	23,029,823,390 (40.5)	24,076,713,120 (43.4)
Cities (except Detroit)	19,584,921,823 (50.8)	25,629,074,188 (49.4)	27,987,315,830 (49.3)	26,351,379,959 (47.5)
Detroit	5,306,284,180 (13.8)	5,769,745,190 (11.1)	5,803,963,340 (10.2)	5,050,841,680 (9.1)
TOTAL	38,551,597,469 (100.0)	51,871,328,650 (100.0)	56,821,102,560 (100.0)	55,478,934,759 (100.0)

Equalized Valuation sharply contrasts with the decrease of the State Equalized Valuation of the total land area under city governments.

The total 1976 State Equalized Valuation for Michigan's 1,245 townships was $24,076,713,120 for an average of $19,338,725 per township. The low was $879,823 (Grim Township of Gladwin County) and the high was $414,385,475 (Redford Township in Metropolitan Wayne County).

The total State Equalized Valuation for the 265 cities in Michigan was $31,402,221,639, including $5,050,841,680 from Detroit. The low city State Equalization Valuation was $859,050 (Gaastra). The average State Equalization Valuation for all cities (excluding Detroit), was $99,815,833. The frequency distribution of 1976 State Equalization Valuations is shown in Table 5.

Table 5.

FREQUENCY AND PERCENTAGE DISTRIBUTION OF STATE EQUALIZED VALUATIONS IN 1976

Millions of Dollars of State Equalized Valuations	Townships		Cities	
	Number	%	Number	%
0 — 10	624	50.1	58	21.9
10 — 50	535	43.0	112	42.3
50 — 100	47	3.8	28	10.6
over 100	39	3.1	67	25.3
Total	1,245	100.0	265	100.0

C. GROWTH OF TOWNSHIP POPULATION

The number of townships in the United States has shown a small decrease from 1967 to 1972—from 17,105 townships to 16,991.[26] In Michigan, the 1,248 townships[27] in existence in 1970 have decreased to 1,245[28] as three townships have incorporated as cities.

A township can also lose its status as a township if an adjacent city annexes it in its entirety. For example, in the case at bar, the City of Novi filed one annexation resolution for seven parcels of township land with a total of less than 100 residents. The city subsequently filed another resolution seeking annexation of the remainder of the Novi Township.

While the number of townships has decreased, the population of townships has increased. Table 6 compares the population and percentage of the total Michigan population of townships and cities in Michigan from 1960 to the present.

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[26]

1972 Census of Governments, Volume 1, Governmental Organization, U.S. Department of Commerce (1972).

[27]

1972 Census of Governments, Volume 4, Finances of Municipalities and Township Governments, Number 4, U.S. Department of Commerce, at 147 (1972).

[28]

Organization of Counties in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan, (January, 1977).

Directory of Michigan Township Officials, 1977-1979; The Michigan Townships Association; Lansing, Michigan (1977).

Table 6.

COMPARATIVE POPULATION OF MICHIGAN TOWNSHIPS AND CITIES

Class	1960[29]	1970[30]	1975[31]
Townships	2,956,128 (37.8%)	3,252,577 (36.6%)	3,479,221 (38.2%)
Cities	4,867,066 (62.2%)	5,629,249[32] (63.4%)	5,637,478[33] (61.8%)
TOTAL	7,823,194 (100%)	8,881,826 (100%)	9,116,699 (100%)

[29]

Michigan had 218 incorporated cities by 1960; *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan* (January, 1977).

[30]

Michigan had 258 incorporated cities by January 1, 1970; *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan* (January, 1977).

[31]

The estimates for the July 1, 1975, population are from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce,* (May, 1977). Cities incorporated as of 1975 totalled 265.

[32]

The total 5,629,249 includes 40 cities not in existence in 1960. These 40 cities contributed 540,919 to the 1970 population of cities which was 6.1% of the state's total 1970 population. The 218 cities incorporated by 1960 had 62.2% of the state population in 1960 and only 57.3% of the state population in 1970.

[33]

The total 5,637,478 also reflects an increase due to seven incorporations between 1970 and 1975. The population of these seven areas which incorporated is thus included in the population of cities in 1975 and is not included in the population of townships in 1975.

Table 6 indicates an increase in the population percentage of Michigan cities from 1960-1970, with a corresponding decline in township population percentage. The population percentage increase in cities, however, was not due to a migration of township residents into cities, but rather reflects the forty townships which incorporated into cities between 1960-1970.[34] The population of the forty townships incorporating into cities was 540,919, representing 6.1% of the 1970 total population.[35] If the population of the newly incorporated cities is excluded from the 1970 population for cities, the cities' share of the state's 1970 population decreased from 1960, rather than increased, from 62.2% to 57.2%. The incorporation of seven township areas to city status from 1970 to 1975 helped minimize the total population loss incurred by Michigan cities.[36]

Despite the forty-seven township areas which incorporated into cities during 1960-1975, Table 6 shows that the total population of Michigan townships *climbed* by 523,093. The population growth rate of Michigan townships has exceeded the growth of the state's cities.

Townships and the township form of government continue to play an important role in Michigan as township population rises.

[34]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan* (January, 1978.)

[35]

List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan (January, 1978).

[36]

Interpretation of *List of Incorporated Cities in Michigan; Registrations and Records Section, Department of State; Lansing, Michigan* (January, 1978).

> Now, it is quite true that today there are more large organizations and probably also bigger organizations than ever before in history; but the number of small units is also growing and certainly not declining in countries like Britain and the United States, and many of these small units are highly prosperous and provide society with most of the really fruitful new developments.
>
> —E. F. Schumacher, *Small is Beautiful* at 64 (1973).

The population growth of both cities and townships goes hand in hand with a need for land. The need for expansion can be efficiently met only by proper utilization and conservation of available land. This necessitates planning and land control that balances ecological and sociological considerations of an area with the needs of both cities and townships and their residents. Section 9 of the Home Rule Cities Act permits cities to increase their size and tax base at the expense of adjacent townships by drawing the boundaries of township areas proposed for annexation so as to include 100-or-less residents, thereby denying township residents a referendum vote on the proposed annexation. Appellants submit that the Section 9 provision, by allowing cities to deny townships residents the referendum vote, also denies township residents expression of the township's needs and plans for expansion or utilization of land.

D. THE LEGAL POWERS OF MICHIGAN TOWNSHIPS

Township government in Michigan has been delegated by the legislature and the Michigan Constitution all of the powers and authority of local government customarily attributable to cities and other municipal corporations throughout the country. The Michigan Constitution provides that constitutional provisions and laws shall be *liberally construed in the township's favor* and that powers granted to townships include both express and *implied powers:*

> The provisions of this constitution and law concerning counties, *townships,* cities, and villages *shall be liberally construed in their favor.* Power granted to counties and *townships* by this constitution and by law shall include those fairly *implied* and not prohibited by this constitution.
>
> —Const. 1963, Art. 7, §34. Emphasis added.

The intention of the delegates to the Michigan Constitutional Convention of 1961, in adopting this provision, is apparent from the record of the proceedings. Delegate Elliot, the Chairman of the Committee on Local Government, gave the following reasons for the language proposed for Article 7, Section 34:

> Much testimony before the committee on local government, together with the experience reported by many of the committee members, has indicated that a major problem in Michigan local government today relates to narrow court construction or interpretation of the statutory powers of counties and townships. This practice, which is traditional with the courts, results in great problems in the drafting of legislation and increases the length of statutes since even minor omissions from them may result in a lack of power wanted or needed by a county or township.
>
> The intent of this section is to mandate the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. It is the understanding of the committee that home rule cities and villages already enjoy a broad construction of their powers and it is not the intention of the committee

to make this construction any less broad. *The principal problem seems to rest with the powers of counties and townships, so the second sentence of this section proposes specifically to broaden their powers and seeks to give the courts some guidance as to the criteria to be used in interpreting the constitution and statutes relative to counties and townships.*

—*State of Michigan Constitutional Convention 1961 Official Record* at 1048. Emphasis added.

Delegate Ford, who introduced the proposal, explained his intention as follows:

It is our intention to come up with a set of rules to play baseball in the supreme court so that you play it with the same rules, whether you come from a township with a township matter or a county with a county matter, or you come from a city. This is all we are trying to do. We are not trying to give one preference over another. We are trying to get a *uniform approach to the interpretation of statutes conferring powers on units of local government.*

—*Id.* at 1050-51. Emphasis added.

Delegate Brake explained the need for the second sentence of Article 7, §34 as follows:

[W]e thought that second sentence was necessary. You will notice in the first sentence it mentions the "cities, villages, counties and townships." *What we have tried to do in the second sentence was to put the township and the counties—they only are mentioned in that sentence—on the same footing as your home rule cities and villages already are.* It is our understanding of the law that anything "fairly implied" in the grants of power to cities and

villages is included in their powers and they may exercise those powers. That is not true as to townships and counties. *We tried by this proposal to put them on the same basis.*

—*Id.* at 2537. Emphasis added.

The Convention's Address to the People contained the following explanation of §34:

This is a new section intended to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. Home rule cities and villages already enjoy a broad construction of their powers *and it is the intention here to extend to counties and townships within the powers granted to them equivalent latitude in the interpretation of the constitution and statutes.*

—*Id.* at 76. Emphasis added.

Thus, the proceedings of the Michigan Constitutional Convention of 1961 demonstrate the delegates' intention in adopting §34 as an attempt to broaden judicial construction of the statutory powers of townships and in so doing, place townships on an equal footing with cities.

Although the enumeration of statutory authority granted to townships is almost limitless, the following is representative of such authority:

1. Section 17 of Art 7 of the Michigan Constitution provides that each organized township shall be a *body corporate* with powers and immunities provided by law.

2. Section 18 of Art 7 of the Michigan Constitution provides for the *election* for terms of not less than two

nor more than four years of a supervisor, clerk, treasurer and not to exceed four trustees in each organized township with *legislative and administrative powers and duties* provided by law.

3. Section 34 of Art 7 of said Constitution grants to townships *implied powers* in addition to those expressly granted.

4. Under MCLA 41.181; MSA 5.45(1), a township is granted *broad legislative powers to adopt ordinances* "regulating the public health, safety and general welfare of persons and property, fire protection, the licensing or use of bicycles, traffic and parking of vehicles, sidewalk maintenance and repairs, and licensing of business establishments, the licensing and regulating of hawkers, vendors, peddlers, solicitors, circuses, carnivals and public improvements and provides penalties for the violation thereof . . ." This act also authorizes the township to employ and establish a *police department* with full power to enforce state laws along with such ordinances.

5. MCLA 41.801 *et seq.;* MSA 5.2640(1) *et seq.*, and MCLA 41.851 *et seq;* MSA 5.2640(31) *et seq.*, provides authority for a township to establish a *fire department and police department* and to assess township-wide for each of said operations up to 10 mills for capital improvements and equipment and an unlimited amount for operating purposes.

6. MCLA 41.721 *et seq.;* MSA 5.2770(5) *et seq.*, authorizes a township through *special assessments*, to construct *public improvements* such as storm and sanitary sewers, water mains, public highways, sidewalks, parks, elevated structures for foot travel, garbage and rubbish collection, bicycle paths, erosion control structures, or

dikes. The utility services may also be funded by *taxation*, rates and charges for the service and connection charges under MCLA 46.171 *et seq.;* MSA 5.2767(1) *et seq.;* MCLA 123.731 *et seq.;* MSA 5.570(1) *et seq.;* and MCLA 141.101 *et seq.;* MSA 5.2731 *et seq.*

7. Townships may provide *street lighting* under MCLA 41.251 *et seq.;* MSA 5.2481 *et seq.*, by use of general fund moneys or special assessment moneys which may be township-wide.

8. A township may engage in *land use planning* under MCLA 125.321 *et seq.;* MSA 5.2963(101) *et seq.*, and may further regulate the use of land within its jurisdiction by *zoning ordinances* and regulations under MCLA 125.271 *et seq.;* MSA 5.2963(1) *et seq.* If a county also has a zoning ordinance affecting lands within a township, *the township zoning ordinance shall supersede the county ordinance* and the county ordinance shall have no force or effect. MCLA 125.297; MSA 5.2963(27).

9. MCLA 125.1509; MSA 5.2949(9) authorizes a township to adopt and enforce *building regulations* for construction within its jurisdiction which supersedes any *county authority* where the township elects to so proceed.

10. Townships adopt their own budgets and control their fiscal year operations under MCLA 141.411 *et seq.;* MSA 5.3228(1) *et seq.*

11. Under MCLA 41.2; MSA 5.2, a township is a *corporate body* which may *sue and be sued*; may appoint all necessary agents and attorneys in that behalf; has the power to purchase and hold real and personal estate for the public use of the inhabitants and to convey, alienate

and dispose of the same and to make all contracts that may be necessary and convenient for the exercise of its corporate powers.

12. In addition to what has previously been cited with regard to powers of taxation for certain utility projects, townships have *general taxation authority* under the Michigan Constitution, Const. 1963, Art. 9, §6 and MCLA 211.201 *et seq.*; MSA 7.61 *et seq.*, and MCLA 41.3; MSA 5.3. It is interesting to note that under MCLA 211.202; MSA 7.62, the term "local unit" specifically includes townships along with counties, villages, cities, and school districts. Aggregate millage may be increased up to 50 mills on each dollar of valuation.

13. All of the public improvement acts cited above, as well as MCLA 131.2, *et seq;* MSA 5.3188(1), *et seq.*, authorize townships to *issue municipal bonds* for the purpose of borrowing money to initially fund such improvements.

14. Townships may acquire, *operate and maintain* parks and places of recreation under MCLA 41.421 *et seq.;* MSA 5.2441 *et seq.*, and MCLA 123.51 *et seq.;* MSA 5.2421 *et seq.*

15. The township board is a *board of health* under MCLA 327.1; MSA 14.61 with authority in subsequent section to make rules and regulations respecting nuisances, causes of sickness, etc., within the township and provide penalties for any violations thereof. Said board also is required to own, operate and maintain a *cemetery* for the use of the inhabitants of the township.

16. The supervisor of the township is the assessing officer in *charge of assessing* all real and personal taxable

property within the township for use by all taxing units such as the county and school districts under MCLA 41.61; MSA 5.52.

17. The township treasurer, under MCLA 211.44; MSA 7.87, has the duty and obligation of collecting all county, school and township taxes assessed against real and personal property within the township. The treasurer is further charged with the duty of receiving and accounting for all township funds which are then subject to annual or semi-annual audit by the Auditor of the State of Michigan.

18. Under Michigan Election Law, MCLA 168.1 *et seq.;* MSA 6.1001 *et seq.*, the township clerk is in charge of the registration of qualified electors for all voting purposes within the township and the noticing and conducting of all state, local and federal elections within said township.

19. It is difficult to perceive of any governmental function normally attributable to local municipalities that is not authorized to be performed by Michigan townships.

20. The primary distinction which does exist between cities and townships is in millage limitations. Charter township boards may, by resolution, levy up to 5 mills without a vote of the electorate. This limitation may be raised to 10 mills with approval of the electorate. A general law township is limited to 1 mill without a vote. The maximum city charter limitation is 20 mills.

E. THE TOWNSHIP FORM OF GOVERNMENT IN MICHIGAN

Michigan townships are governed by a township board, composed of the supervisor, the clerk, the treasurer, and either two or four trustees, depending upon population or the number of registered voters. Candidates for township office must declare themselves members of a political party as elections are partisan. Officials are elected on an at-large basis.

The township supervisor acts as the chief administrative and executive officer. The board may exercise a wide range of appointments of officers, agents, employees and board members including the following: zoning board, planning commission, urban planner, fire and police administration, building inspector, clerical employees, nurse, traffic officers, attorney, engineer, auditors and assessors. This enables a township board to hire professionals for experienced and efficient operation of township government. Kenneth VerBurg, *A Study of the Legal Powers of Michigan Local Governments*, at 1-2 (1969).

Townships are a representative form of government. Their responsibility to the people is delineated and fixed in that they may act only as permitted by the constitution and statutes of Michigan or by interpretation of the common law by the Michigan Supreme Court.

A breakdown of Michigan township government finances is included as Exhibit O. The table shows that Michigan townships in 1970 had a total general revenue of $156,602,000, a total general expenditure of $119,778,000, a total utility revenue of $14,775,000, a total utility expenditure of $18,105,000, and a total outstanding end of year debt of $186,593,000. The largest total township expenditures are allotted to the following services:

highways — $19,558,000; utilities — $18,105,000; fire protection — $12,232,000; and police protection — $10,925,000

F. SERVICES PROVIDED BY TOWNSHIPS

Services provided to residents by Michigan Townships include utilities such as water supply and sewerage disposal (MCLA 41.721 *et seq.*; MSA 5.2770[51] *et seq.*), fire and police protection (MCLA 41.801 *et seq.*; MSA 5.2640[1] *et seq.*, and MCLA 41.851 *et seq.*; MSA 5.2640[31] *et seq.*, parks and recreation (MCLA 41.421 *et seq.*; MSA 5.2441 *et seq.* and MCLA 123.51 *et seq.*; MSA 5.2421 *et seq.*), maintenance of parking lots and sidewalks (MCLA 41.181; MSA 5.45[1]), street lights (MCLA 41.251 *et seq.*; MSA 5.2481 *et seq.*) and cemeteries (MCLA 128.151 *et seq.*; MSA 8.141 *et seq.*), health (MCLA 327.1 *et seq.*; MSA 14.61 *et seq.*), safety, (MCLA 256.562; MSA 9.1705), and sanitation services (MCLA 338.1301 *et seq.*; MSA 14.425[1] *et seq.*). Townships may engage in environmental protection and control (MCLA 691.1201 *et seq.*; MSA 14.528[201] *et seq.* and MCLA 752.906; MSA 28.603[6]), irrigation and drainage (MCLA 280.1 *et seq.*; MSA 11.1001 *et seq.*), soil conservation (MCLA 281.621 *et seq.*; MSA 13.1821 *et seq.*), management of inland lakes and streams (MCLA 281.951 *et seq.*; MSA 11.475[1] *et seq.*), construction and maintenance of public wharves, piers, docks and landing places (MCLA 41.481 *et seq.*; MSA 5.2391 *et seq.*). As a result of statutes granting local governments the right to engage in joint action with each other, townships have become increasingly involved in mass transit authorities (MCLA 124.401 *et seq.*; MSA 5.3475[101] *et seq.*) in suburban areas, and in the establishment and maintenance of hospitals (MCLA 331.1 *et seq.*; MSA 5.2456[1] *et seq.*) and libraries (MCLA 41.241 *et seq.*; MSA 5.2371 *et seq.*).

G. STATISTICAL DATA ON ANNEXATION OF TOWNSHIP LAND BY CITIES IN MICHIGAN

A comprehensive list of resolutions by cities seeking annexation of adjacent township area(s) which were filed with the State Boundary Commission from 1972 to the present is included as Exhibit K in the Appendix. The table shows the number of registered voters, and the population of each city and township affected by the proposed annexation. THESE FIGURES REPRESENT THE NUMBER OF VOTERS AND RESIDENTS WHO ARE DENIED EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY THE ARBITRARY "100-OR-LESS" CLASSIFICATION. Exhibit K also shows the areas proposed for annexation which contain more, or less, than 100 residents, which determines whether the proposed annexation of township area by a city will or will not be subject to a referendum vote.

The date from the comprehensive table when tabulated in a different form, shows that a large number of annexation proposals by city councils to annex township areas have been initiated since 1971, the effective date of the challenged statute's "loophole" provision.

Table 7 lists the frequency of proposed annexations by cities of township areas per year since 1971.

Table 7 indicates that city councils have filed twenty-three (23) annexation resolutions from January 1, 1978 to February 15, 1978. An additional eleven (11) annexation resolutions were filed by city councils on February 17, 1978, for a total of thirty-four (34) annexation resolutions. This compares with a total of twenty-two (22) city council annexation resolutions filed in the entire year of 1977.

Table 7.

FREQUENCY OF RESOLUTION FILINGS[37]

YEAR OF FILING	ANNEXATION RESOLUTIONS BY CITIES
71	35
72	27
73	23
74	13
75	10
76	25
77	22
78 (as of 2/15/78)	23
TOTAL	178[38]

Of the twenty-two (22) annexation resolutions filed by city councils in 1977, only three (3) were filed prior to the Michigan Supreme Court Decision herein appealed. Nineteen (19) annexation resolutions were filed after October 24, 1977, the date of the Michigan Supreme Court decision. *Thus, fifty-three (53) annexation resolutions have been filed by city councils since the Michigan Supreme Court's decision.*

In an attempt to annex all or at least most of the shopping malls and shopping centers in township areas adjacent to the City of Flint, the City of Flint has filed twenty-two (22) resolutions for township annexations with the State Boundary Com-

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[37]

Tabulated from *Dockets of Filings, Michigan State Boundary Commission* (1971—February 15, 1978) by Dr. Dennis Gilliland (see Affidavit Exhibit J).

[38]

An additional eleven (11) annexation resolutions by city councils were filed with the State Boundary Commission on February 17, 1978. This information was received too late to be included in this table.

mission in 1978. The challenged provision of the Michigan Home Rule Cities Act encourages "land grabs" of this sort by cities on adjacent townships.

Table 8 shows the rate among resolutions for annexation by cities of adjacent township areas filed with the Michigan State Boundary Commission which are for annexation of township areas with 100 or less residents for January 1, 1977—February 15, 1978. By seeking to annex a township area with 100 or less residents, a city may proceed with annexation without a referendum vote by the residents in the township area proposed for annexation.

The high rate of annexation resolutions filed by cities which involve township areas with 100-or-less residents, indicates that cities are intentionally drawing the boundaries of proposed annexation areas to exclude residents and to insure that there will be no referendum vote if the State Boundary Commission approves a township's annexation area as proposed by a city.

A resolution for annexation of an adjacent township area by a city is examined by the State Boundary Commission to determine if the resolution is "legally sufficient," by satisfying certain minimum legal standards. The State Boundary Commission only rules on annexation resolutions which are legally sufficient.

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[39]

The figures are provided by the Michigan Department of Treasury, Bureau of Local Government Services, State Boundary Commission, Mr. Robert Terry, Criteria Analyst, and represent, as of February 15, 1978, an estimate of the populations of the township areas proposed for annexation by cities. When an annexation proposal reaches the final decision stage of APPROVAL-DENIAL by the State Boundary Commission, a population figure is determined.

Table 8.

RESOLUTIONS FILED BY CITIES SEEKING ANNEXATION OF ADJACENT TOWNSHIP AREAS WITH 100 OR LESS RESIDENTS[39]

YEAR OF FILING	100 OR LESS RESIDENTS IN PROPOSED ANNEXATION AREAS; NO REFERENDUM VOTE UNDER SECTION 9, MICHIGAN HOME RULE CITIES ACT	MORE THAN 100 RESIDENTS IN PROPOSED ANNEXATION AREA; REFERENDUM VOTE	RATIO 100-OR-LESS TOTAL
1977	16	6	16/22 (72.7%)
1978	23	0	23/23 (100.0%)
TOTAL	39	6	39/45 86.7%)

More extensive data is available for "legally sufficient" resolutions than is available for resolutions which are eliminated at an early stage due to error in the form or execution of the resolution itself.

Table 9 shows the frequency tabulation of the percentage (%) of a township's State Equalized Valuation (S.E.V.) for township areas sought to be annexed by cities in annexation filings from January 1, 1972 through July, 1977.

Table 9.

FREQUENCY TABULATION BY PERCENTAGE (%) OF TOWNSHIP STATE EQUALIZED VALUATION FOR TOWNSHIP AREA SOUGHT TO BE ANNEXED BY CITIES[40]

CLASS (Percentage of Township SEV in Annexation Area)	Number of Resolutions by Cities for Annexation of an Adjacent Township Area	%
Under 1%	15	28.3
1%—Under 10%	23	43.4
10%—Under 50%	11	20.8
50%—Under 100%	2	3.8
100%	2	3.8
TOTAL	53	100.0

[40]

Derived by Dr. Dennis Gilliland (See affidavit Exhibit J) from data available, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission*, by Robert W. Terry, Criteria Analyst, Michigan State Boundary Commission (July, 1977). Data on the township state equalized valuations is only available for those annexation resolutions that the State Boundary Commission has found to be legally sufficient.

Annexation efforts by cities of adjacent township areas frequently have a significant impact on the township from which land is sought to be annexed. Table 9 shows that *28.3% of proposed annexations by city councils were for township areas representing 10% or more of a township's State Equalized Valuations*. These figures show that in only too many cases, city councils are attempting to annex valuable parcels of township land.

H. IMMEDIATE, IRREPARABLE AND SUBSTANTIAL HARM WILL RESULT TO TOWNSHIPS AND TOWNSHIP RESIDENTS UNLESS THE OPINION OF THE MICHIGAN SUPREME COURT IS REVERSED.

Violation of the Equal Protection guarantee of the Fourteenth Amendment of the United States Constitution under the annexation provisions of the Michigan Home Rules Cities Act is a substantial federal question due to the sheer numbers of voters residing in Michigan townships. Three million, four hundred seventy-nine thousand, two hundred twenty-one (3,479,221)[41] township residents are denied Equal Protection of the law by an arbitrary classification which grants the right to vote in annexation matters to some voters and denies that right to other equally interested voters.

The importance of the township form of government in Michigan is evident. It is an effective and economical means of providing over one-third of all Michigan residents with a

[41]

The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce*, (May, 1977).

wide range of services and local representation. Yet, as a result of the "loophole" provision of Section 9 of the Michigan Home Rule Cities Act, the township form of government stands to suffer immediate and irreparable harm. Enactment of that provision has opened Pandora's Box. Once cities became aware of the "loophole," city proposals for annexation of valuable township land have been gerrymandered so that the proposed annexation area has 100-or-less residents. The purpose of a city's gerrymander is blatantly clear — circumvention of a referendum vote by township residents in the proposed annexation area. The city avoids a referendum vote, acquires the township land and bolsters its tax base. The township residents are denied their fundamental right to vote, the township loses part of its tax base and some of its residents.

The few exceptions are cases where a city, having already annexed the bulk of a township's tax base, magnanimously annexes the remainder of the township residential areas with a small tax base.

The challenged legislation enables and encourages cities to increase their own tax bases and insure their own future expansion at the expense of townships. This inequality, which favors cities over townships, cannot be justified by differences in governmental powers or services because the state legislature has delegated authority to Michigan townships to provide services virtually identical to those of cities.

Cities view annexation as a solution to dwindling tax bases resulting from changing patterns of population growth. The needs and Constitutional rights of township residents should not be casually discarded in favor of an expedient approach for cities to deal with their fiscal problems.

The "loophole" provision has inadvertently given control of the annexation process to city councils by allowing them to

gerrymander the boundaries of township areas proposed for annexation so that in most cases the township areas contain 100-or-less residents and township voters are consequently denied the right to a referendum vote on annexation measures. The "loophole" provision enables cities to annex entire townships piece by piece, and circumvent the legislative intent to grant a referendum vote on annexation measures. *It is unlawful to do indirectly what cannot be done directly.* The "loophole" provision permits cities to do just that. Cities can avoid an annexation referendum vote on proposed annexation for a township area which contains more than 100 residents, merely by dividing the desired area into portions and annexing the portions separately.

A referendum vote on annexation issues gives township residents an opportunity to express their preference. This right of expression is more than a choice between a city and a township form of government or a desire for economical services. The sociological makeup of an area may include a separate township regional identity and shared concerns among the township residents. By denying township residents a referendum vote, a city seeking annexation denies those residents expression of ther sentiments. For instance, one alternative to a township's annexation by a city is incorporation of the township as a separate city. This allows the township to preserve its regional identity. In some situations, the "loophole" provision has forced townships into premature incorporation in order to avoid annexation.

The issues before this Court are not intended to pit cities against townships. The residents and the government of cities and townships all have an interest in annexation questions. Annexation often involves valuable township land which increases the tax base of the annexing city but decreases the tax base of the township from which the land has been annexed. This results in lower taxes for city residents and higher

taxes for township residents. Annexation has economic as well as sociological effects on the residents of the township *and* the city involved in an annexation question. Proposed annexations should be determined on the basis of the needs of all the interested parties, including the residents of the city, the township and the township area proposed for annexation. The "loophole" provision fails in this respect.

Initiation of an annexation proposal is done by the city council, a representative body of all the people in the city. There is no corresponding right under the statute for all the people in the township to act through *its* own representative body, the township board. Townships are also denied the annexation option available to cities. Townships may not annex a portion of a city which meets the township's needs.

An unequal voice, and denial of the fundamental right to vote on annexation measures results in immediate, irreparable and substantial harm to township residents. Township residents are denied Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution, suffer economic loss due to increased taxes in their township, and are denied the opportunity to express their preference for their form of local government.

The challenged legislation, Michigan Home Rule Cities Act, MCLA 117.9; MSA 5.2088, causes immediate, irreparable and substantial harm to the township form of government. Townships are losing significant amounts of their tax bases as a result of resolutions by cities for annexation of adjacent township land. City annexation resolutions are gerrymandered to insure that 100-or-less township residents live in the township area proposed for annexation, precluding a referendum vote on the proposed annexation.

The inequities in annexation procedures and standards under the statute will continue to cause irreparable harm to the whole township form of government by allowing cities to eat away at the economic base of townships. Townships are in danger of becoming a form of government inferior to cities as cities continue to annex wealthy areas, leaving only poverty-stricken areas to the township.

The ensuing harm to townships and their residents is *immediate*. Eighty-four resolutions by cities seeking to annex part of an adjacent township are currently pending before the Michigan State Boundary Commission.

Seventy-four (74) out of the eighty-four (84) resolutions that are currently pending have been filed since January 1, 1976. Fifty-three (53) of the pending resolutions were filed after October 24, 1977, the date the Michigan Supreme Court decision herein appealed from. It can be anticipated that many more resolutions will be filed in the near future. Any of these resolutions approved by the State Boundary Commission, if the area proposed for annexation contains 100 or less residents, will result in *all* the residents of the townships and cities being denied an equal right to a referendum on the proposed annexation.[42]

The ensuing harm is irreparable. There is no procedure, legislative or otherwise, by which a township may recover land lost to a city through the annexation process. The ensuing harm is substantial. Numerous annexation resolutions are pend-

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[42]

Tabulated by Dr. Dennis Gilliland from Robert W. Terry, Criteria Analyst, State Boundary Commission, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977) and *Dockets of Filings, Michigan State Boundary Commission* (1971–February 17, 1978). (See affidavit Exhibit J).

ing, the township land proposed for annexation is valuable, the township are losing *significant percentages* of their tax base, and three million, four hundred seventy-nine thousand, two hundred twenty-one (3,479,221)[43] township residents are being denied Equal Protection of the law by the Home Rule Cities Act which grants a referendum vote on some proposed annexations, but denies a referendum vote on other proposed annexations based upon the irrational 100-or-less population classification.

VI. CONCLUSION

The right to vote has long been deemed by this Court to be a fundamental right. Any attempt by a state to restrict that right has been subjected by this Court to the strict scrutiny test. Such legislation has only been upheld where a compelling state interest has been shown to justify such a restriction.

This Court's position has been enunciated in voting cases involving legislative reapportionment; the poll tax as a prerequisite for voting; denial of the right to vote in school board and municipal bond elections; and the imposition of excessive durational residence requirements.

In upholding the Michigan Home Rule Cities Act (MCLA 117.9; MSA 5.2088), which permits voters in certain areas to vote in annexation elections while denying that right to other registered voters, the Supreme Court of Michigan *refused* to

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[43]

The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670*, Bureau of the Census, U.S. Department of Commerce, May, 1977.

strictly scrutinize the challenged statute, and neglected to identify a compelling state interest to justify invading the constitutional guarantee of Equal Protection, as afforded to all citizens by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The classification upheld by the Michigan Supreme Court is *not* reasonable in relation to the nature of the legislation. The result of upholding the statute is that the right to a referendum vote is denied electors residing in the township and city if there are 100-or-less residents in the township area proposed for annexation, while city and township residents have a right to a referendum vote if the township area proposed for annexation contains more than 100 residents.

The Michigan statute also treats residents of two cities differently than residents of a township and a city when annexation is sought. Residents of two cities are granted a vote on proposed annexation measures involving annexation by one city of part of a second city, regardless of population, but the statute arbitrarily denies a vote to township residents and city residents on proposed annexation measures involving annexation by a city of a township area with 100-or-less residents. These disqualifications violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THE STATE HAS A LEGITIMATE INTEREST IN ESTABLISHING VOTER QUALIFICATIONS, *BUT ONCE THE VOTING FRANCHISE IS GRANTED TO SOME, IT MAY NOT BE RESTRICTED OR DENIED TO OTHERS BY A STATE IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.*

The questions presented by this appeal are substantial and of public importance. The judgment of the Michigan Supreme Court jeopardizes the fundamental right possessed by all electors, and places a premium on the right to vote by establishment of an arbitrary population figure for annexations by a city of an adjacent township area.

Accordingly, appellants pray that this Court grant this appeal and reverse the judgment of the Michigan Supreme Court, thereby permitting all citizens who are registered electors in cities and townships to participate in the process of determining whether a requested annexation will garner the necessary approval of all the affected governmental entities.

In the alternative, appellants pray that this Court remand this matter to the Michigan Supreme Court based on the three errors of the Michigan Court: namely, that it over-extended the application of dicta in *Hunter,* decided in 1907, without any authority; secondly that it did not consider *Gomillion,* decided in 1967, which substantially limited *Hunter;* and thirdly, that it did not consider *Lockport,* decided in 1977, which supports the position of Appellants.

Respectfully submitted,

DOWNS AND PIRICH
Attorneys for Appellants
Tom Downs
John D. Pirich
603 Capitol Savings &
Loan Bldg.
Lansing, Mich. 48933

BAUCKHAM, REED,
LANG, SCHAEFER,
& TRAVIS
Attorneys for Appellants
John Bauckham
500 Park Building
Kalamazoo, Mich. 49007

Of Counsel:
Eugene F. Black
Michigan Supreme Court
Justice (1956-1973), Retired
2700 Strawberry Lane
Port Huron, Mich. 48060

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

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